

12-14-2009

State v. Branigh Clerk's Record v. 6 Dckt. 36427

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LAW CLERK

In the
SUPREME COURT
of the
STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

VOLUME VI
SC #36427

LEOTIS B. BRANIGH III,

Defendant-Appellant.

FILED - CO

2014 20

Supreme Court Court of
Entered on ATS by: _

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in and
for Nez Perce County

CLERK' S RECORD

Honorable JEFF M. BRUDIE, District Judge

LAWRENCE G. WASDEN
Attorney for Plaintiff-Respondent

MOLLY J. HUSKEY
Attorney for Defendant-Appellant

36427

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 36427
)	
vs.	)	TABLE OF CONTENTS
)	
LEOTIS B. BRANIGH III,	)	VOLUME VI
)	
Defendant-Appellant.)	

	<u>Page</u>
Order filed November 24, 2009	1122-1124
Initial Determination of Probable Cause filed October 2, 2007	1125-
Affidavit of Neil Johnston filed November 7, 2007	1126-1127
Affidavit of Lila Johnston filed November 7, 2007	1128-1129
Affidavit of Desiree Anderson filed November 7, 2007	1130-1131
Application for Transcript filed December 10, 2007	1132-1133
Notice of Intent not to Seek the Death Penalty filed January 2, 2008	1134-1135
Affidavit in Support of Termination of the Services of Fitzgerald and Van Idour Attorneys at Law filed January 18, 2008	1136-1138
Notice of Termination of the Services of Fitzgerald and Van Idour Attorneys at Law filed January 18, 2008	1139-
Waiver of Speedy Trial filed March 13, 2008	1140-1141
Affidavit of Daniel L. Spickler filed May 9, 2008	1142-1144
Affidavit of Lt. Steve Lutes filed May 9, 2008	1145-1192

Waiver of Speedy Trial filed June 4, 2008	1193-1194
Memorandum in Support of First Motion in Limine filed October 20, 2008	1195-1203
Affidavit in Support of Motion for Reconsideration filed February 20, 2009	1204-1210
Amended Clerk's Certificate	1211-1212

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 36427
)	
vs.	)	INDEX
)	
LEOTIS B. BRANIGH III,	)	VOLUME VI
)	
)	
Defendant-Appellant.)	

Page

Affidavit in Support of Motion for Reconsideration filed February 20, 2009	1204-1210
Affidavit in Support of Termination of the Services of Fitzgerald and Van Idour Attorneys at Law filed January 18, 2008	1136-1138
Affidavit of Daniel L. Spickler filed May 9, 2008	1142-1144
Affidavit of Desiree Anderson filed November 7, 2007	1130-1131
Affidavit of Lila Johnston filed November 7, 2007	1128-1129
Affidavit of Lt. Steve Lutes filed May 9, 2008	1145-1192
Affidavit of Neil Johnston filed November 7, 2007	1126-1127
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Application for Transcript filed December 10, 2007	1132-1133
Initial Determination of Probable Cause filed October 2, 2007	1125-
Memorandum in Support of First Motion in Limine filed October 20, 2008	1195-1203

Notice of Intent not to Seek the Death Penalty filed January 2, 2008	1134-1135
Notice of Termination of the Services of Fitzgerald and Van Idour Attorneys at Law filed January 18, 2008	1139-
Order filed November 24, 2009	1122-1124
Waiver of Speedy Trial filed June 4, 2008	1193-1194
Waiver of Speedy Trial filed March 13, 2008	1140-1141

FILED

2009 NOV 24 AM 7 32

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE
DEPUTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

LEOTIS BRANNON BRANIGH, III,

Defendant-Appellant.

CASE NO. CR 2007-8107
SUPREME COURT NO. 36427

ORDER

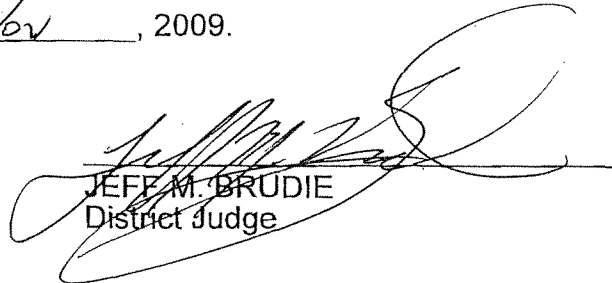
Upon reviewing the attached Objection to the Record and finding good cause, IT IS
HEREBY ORDERED the Record on Appeal in the above mentioned case shall include
the following:

- 1) Initial Determination of Probable Cause filed 10/2/07;
- 2) Affidavit of Desiree Anderson filed 11/7/07;
- 3) Affidavit of Lila Johnston filed 11/7/07;
- 4) Affidavit of Neil Johnston filed 11/7/07;
- 5) Application for Transcript filed 12/10/07;
- 6) Notice of Intent to Seek the Death Penalty filed 1/2/08;
- 7) Transcript filed 1/10/08;
- 8) Notice of Termination of Services of Fitzgerald and Van Idour and Affidavit in
Support of Termination of Services filed 1/18/08;
- 9) Waivers of Speedy Trial filed 3/13/08 and 6/4/08;
- 10) Affidavit of Daniel L. Spickler filed 5/9/08;
- 11) Affidavit of Lt. Steve Lutes filed 5/9/08;

- 12)Memorandum in Support of 1st Motion in Limine filed 10/20/08;
- 13)Letter received re: Notice of Appeal filed 12/31/08; and
- 14)Defendant's Affidavit in Support of Motion for Reconsideration filed 2/20/09.

The above items shall be prepared and lodged with the Clerk of the Idaho Supreme Court, and copies served on the State Appellate Public Defender's Office and the Idaho Attorney General's Office. The above items shall be prepared at county expense.

DATED this 23 day Nov, 2009.


JEFF M. BRUDIE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24 day of November, 2009, served a true and correct copy of the attached ORDER by placing a copy in the United States mail, postage prepaid, addressed to:

DANIEL L SPICKLER
PO BOX 1267
LEWISTON ID 83501

CHARLES E KOVIS
PO BOX 9292
MOSCOW ID 83843

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010

STEPHEN KENYON
CLERK OF THE SUPREME COURT
PO BOX 83720
BOISE ID 83720 0101

SARA B THOMAS
CHIEF APPELLATE UNIT
STATE APPELLATE PUBLIC DEFENDER
3647 LAKE HARBOR LANE
BOISE ID 83703


Clerk of the Court

FILED

2007 OCT 2 PM 1 32

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

LEOTIS B. BRANIGH III,

Defendant.

CASE NO. **CR07-08107**

INITIAL DETERMINATION OF
PROBABLE CAUSE

The undersigned Magistrate having examined the Affidavit submitted by Tom Greene, along with the attached documents, and the Complaint against the above defendant for the crime(s) of: **COUNT I - MURDER IN THE FIRST DEGREE, I.C. §18-4001, 18-4002 and 18-4003, a felony;** having been laid before the undersigned Magistrate, it is hereby determined by the undersigned Magistrate that there is probable cause to believe that the said offense has been committed, and that the defendant has committed it.

DATED this 2nd day of October 2007.


MAGISTRATE

ORIGINAL

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

LEOTIS B. BRANIGH III,

Defendant.

CASE NO. CR2007-0008107

AFFIDAVIT OF NEIL JOHNSTON

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

COMES NOW, NEIL JOHNSTON being first duly sworn on oath, deposes and says
as follows:

1. That your affiant is listed in a No Contact Order entered in this case on
October 2, 2007.
2. That I do not want the defendant to contact me.
3. That I am requesting that the No Contact Order remain in effect and NOT
be dismissed and/or vacated in this case.

FURTHER, AFFIANT SAITH NOT.

DATED this 6 day of November 2007.

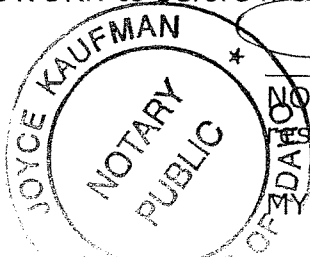
Neil Johnston
NEIL JOHNSTON

STATE OF I D A H O)

: ss.

County of Nez Perce)

SUBSCRIBED AND SWORN to before me this 6th day of November, 2007



Joyce Kaufman
NOTARY PUBLIC in and for Idaho
residing at Lewiston therein.

MY COMMISSION EXPIRES: 9-8-13

AFFIDAVIT OF NEIL JOHNSTON

1126

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing Affidavit of NEIL JOHNSTON was

(1)_____ hand delivered, or

(2)_____✓ hand delivered via court basket, or

(3)_____ sent via facsimile, or

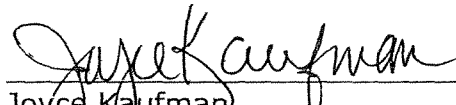
(4)_____ mailed, postage prepaid, by depositing the same in the United States mail, addressed to the following:

ADDRESSED TO THE FOLLOWING:

Robert J. Van Idour
FITZGERALD & VAN IDOUR
504 Main Street, Suite 480
Lewiston Idaho 83501

Prosecutor's Office
P. O. Box 1267
Lewiston, ID 83501

DATED this 7th day of November 2007.



Joyce Kaufman
Victim/Witness Program Coordinator

CV

ORIGINAL FILED

2007 NOV 7 AM 11 57

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE. COURT

STATE OF IDAHO,

Plaintiff,

vs.

LEOTIS B. BRANIGH III,

Defendant.


CASE NO. CR2007-0008107
DEPUTY

AFFIDAVIT OF LILA JOHNSTON

COMES NOW, LILA JOHNSTON being first duly sworn on oath, deposes and says
as follows:

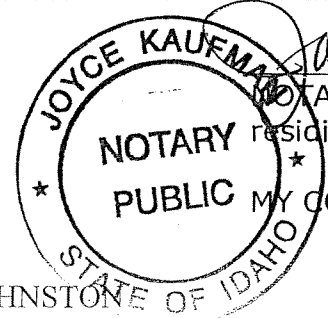
1. That your affiant is listed in a No Contact Order entered in this case on
October 2, 2007.
2. That I do not want the defendant to contact me.
3. That I am requesting that the No Contact Order remain in effect and NOT
be dismissed and/or vacated in this case.

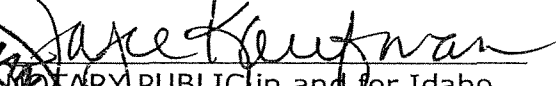
FURTHER, AFFIANT SAITH NOT.

DATED this 6 day of November 2007.

LILA JOHNSTON

STATE OF I D A H O)
: ss.
County of Nez Perce)

SUBSCRIBED AND SWORN to before me this 6th day of November, 2007




NOTARY PUBLIC in and for Idaho
residing at Bewiston therein.
MY COMMISSION EXPIRES: 9-8-13

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing Affidavit of LILA JOHNSTON was

(1)_____ hand delivered, or

(2)_____ ☒ hand delivered via court basket, or

(3)_____ ☒ sent via facsimile, or

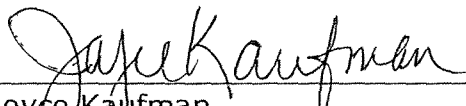
(4)_____ mailed, postage prepaid, by depositing the same in the United States mail, addressed to the following:

ADDRESSED TO THE FOLLOWING:

Robert J. Van Idour
FITZGERALD & VAN IDOUR
504 Main Street, Suite 480
Lewiston Idaho 83501

Prosecutor's Office
P. O. Box 1267
Lewiston, ID 83501

DATED this 11th day of November 2007.



Joyce Kaufman
Victim/Witness Program Coordinator

CV

ORIGINAL

FILED

2007 NOV 7 AM 11 57

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

LEOTIS B. BRANIGH III,

Defendant.

CASE NO. CR2007-0008107

DEPUTY

AFFIDAVIT DESIREE ANDERSON

COMES NOW, DESIREE ANDERSON being first duly sworn on oath, deposes and
says as follows:

1. That your affiant is listed in a No Contact Order entered in this case on
October 2, 2007.
2. That I do not want the defendant to contact me.
3. That I am requesting that the No Contact Order remain in effect and NOT
be dismissed and/or vacated in this case.

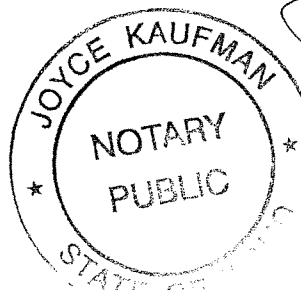
FURTHER, AFFIANT SAITH NOT.

DATED this 7 day of November 2007.

Desiree Anderson
DESIREE ANDERSON

STATE OF IDAHO)
: ss.
County of Nez Perce)

SUBSCRIBED AND SWORN to before me this 7th day of November, 2007



Joyce Kaufman
NOTARY PUBLIC in and for Idaho
residing at Lewiston therein.

MY COMMISSION EXPIRES: 9-18-13

AFFIDAVIT OF DESIREE ANDERSON

1130

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing Affidavit of DESIREE ANDERSON was

(1)_____ hand delivered, or

(2)_____✓ hand delivered via court basket, or

(3)_____✓ sent via facsimile, or


(4)_____ mailed, postage prepaid, by depositing the same in the United States mail, addressed to the following:

ADDRESSED TO THE FOLLOWING:

Robert J. Van Idour
FITZGERALD & VAN IDOUR
504 Main Street, Suite 480
Lewiston Idaho 83501

Prosecutor's Office
P. O. Box 1267
Lewiston, ID 83501

DATED this ph day of November 2007.



Joyce Kaufman,
Victim/Witness Program Coordinator

William J. Fitzgerald, ISBN 1974
Robert J. Van Idour, ISBN 2644
Joanna M. McFarland, ISBN 7112
FITZGERALD & VAN IDOUR
ATTORNEYS AT LAW
Towne Square, Suite 480
504 Main Street
Lewiston, Idaho 83501
Telephone: (208) 746-4090
Facsimile: (208) 746-5571

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,	)	CASE NO. CR07-08107
)	
Plaintiff,)	
)	
vs.	)	APPLICATION FOR TRANSCRIPT
)	
LEOTIS B. BRANIGH, III,)	
)	
Defendant.)	
_____)	

COMES NOW, Robert J. Van Idour, of the law firm FITZGERALD AND VAN IDOUR, an attorney for the above-named defendant, and respectfully shows the Court as follows:

I.

That petitioner was appointed to represent the above-named defendant on the 2nd day of October, 2007.

LEOTIS B. BRANIGH, III, is accused of the crime of MURDER IN THE FIRST DEGREE, in violation of I.C. § 18-4001, 18-4002, and 18-403, and ELUDING, in violation of I.C. § 49-1404(1)(2)(a) and/or (c), and EXTENDED SENTENCE FOR USE OF FIREARM OR DEADLY WEAPON, in violation of I.C. § 19-2520, felonies.

FILED

2007 DEC 10 PM 4 32

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Patty O. Weeks
DEPUTY

II.

That thereafter, on the 5th day of December, 2007, the defendant appeared in the District Court for an Arraignment, that the Court set the Final Pretrial Conference on the 5th day of March, 2008, and the Jury Trial on the 17th day of March, 2008.

III.

That a transcript of the preliminary hearing held on November 30, 2007, is necessary for trial preparation.

IV.

That said defendant is indigent and without funds or other resources to pay for the said transcript.

WHEREFORE, petitioner prays that an order be made for the preparation of the said transcript of the preliminary hearing.

DATED this 10th day of December, 2007.

FITZGERALD & VAN IDOUR
Attorneys for Defendant

By [Signature]

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 10th day of December, 2007, I caused a true and correct copy of the foregoing to be hand-delivered to the Nez Perce County Prosecuting Attorney, Lewiston, Idaho 83501.

FITZGERALD & VAN IDOUR
Attorneys for Defendant

By [Signature]

ORIGINAL

DANIEL L. SPICKLER

Nez Perce County Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
Idaho State Bar No. 2923

FILED

2008 JAN 2 PM 4 14

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Patty O. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,	)	CASE NO. CR2007-0008107
)	
Plaintiff,	)	NOTICE OF INTENT NOT TO
	)	SEEK THE DEATH PENALTY
vs.)	
)	
LEOTIS B. BRANIGH III ,)	
)	
Defendant.)	

COMES NOW, DANIEL L. SPICKLER, Prosecuting Attorney for Nez Perce County, Idaho, and hereby provides notice to the above-named Defendant and his attorneys, ROBERT J. VAN IDOUR, pursuant to Idaho Code Section 18-8004A that the State will not seek the death penalty in the above-captioned matter.

DATED this 2nd day of January 2008.

Daniel L. Spickler

DANIEL L. SPICKLER
Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing NOTICE OF INTENT NOT TO SEEK THE DEATH PENALTY was

- (1) _____ hand delivered, or
- (2) ✓ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Robert J. Van Idour
FITZGERALD & VAN IDOUR
504 Main Street, Suite 480
Lewiston, ID 83501

DATED this 2nd day of January 2008.



SHELLY L. DAMATO
Executive Sr. Legal Assistant

Leotis Brannon Branigh III
P.O. Box 896
Nez Perce County Jail
Lewiston, ID 83501
Defendant

FILED
2008 JAN 18 PM 3 55
PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty Weeks
DEPUTY

In The District Court Of The Second Judicial District Of
The State Of Idaho, In And For The County Of Nez Perce.

State Of Idaho
Plaintiff,

v.

Leotis Brannon Branigh III
Defendant

Case No. CR2007-08107
Affidavit In Support Of
Termination Of The Services
Of Fitzgerald And Van Idour,
Attorneys At Law.

Affidavit

State Of Idaho)
) ss.
County Of Nez Perce)

I, Leotis Brannon Branigh III, the defendant in the above-entitled matter, after being first duly sworn on oath, deposes and says as follows:

1. Affiant is the defendant in this case.
2. Affiant does not have access, at present, to materials and supplies needed to meet the filing requirements of Idaho Criminal Rule 12 (c).

3. Affiant makes this affidavit in support of Affiant's Notice of Termination of the Services of Fitzgerald and Van Idour, Attorneys at Law.

4. Affiant has been unable to obtain copies of relevant Discovery that has been in the possession of Defense Counsel since October.

5. Affiant has been unable to get Defense Counsel to file applicable requests for Discovery, and multiple Motions relative to the Defense in this case.

6. Affiant has had difficulty making contact with Defense Counsel by phone and have been told multiple times that Defense Attorneys are "out to lunch". This is oftentimes between the hours of 11:00 AM to 3:00 PM, with one occasion in which Affiant called at 3:15 PM, and was told that Mr. Fitzgerald and Mr. Van Idour still hadn't returned from lunch.

7. Affiant has been told that motions were being filed and/or legal actions taking place, that have not, as yet, been done. Many of these motions/legal actions must be done in a timely manner in order to be effective.

8. Affiant believes that Defense Counsel, is, at present, either unwilling and/or unable to comply with Affiant's requests and/or decisions concerning Affiant's defense.

9. Affiant believes that according to Idaho Criminal Rule 10 and Article 6 of the United States Constitution, Affiant has a right to assistance of counsel.

AFFIDAVIT IN SUPPORT OF TERMINATION OF THE SERVICES
OF FITZGERALD AND VAN IDOUR, ATTORNEYS AT LAW

1137

10. Affiant believes that right to be defined and interpreted by the case of State v. Browning 121 Idaho 239, 824 P.2d 170 (Ct. App. 1992) to include, "the right to effective assistance of counsel".

11. Affiant believes that neither the authors of Article 6 of the United States Constitution, nor the Idaho Appellate Courts interpret the word "assistance" to mean that a criminal Defendant is required in any way, to relinquish control of his/her Defense to counsel assigned to a criminal case.

12. This Affiant cannot adequately prepare a Defense in this case, nor adequately assist Defense Counsel in this case without first having access to Discovery as needed and having the necessary Motions/Legal actions, filed in a timely fashion to ensure the effectiveness of Defenses.

13. Affiant is therefore terminating the services of Fitzgerald and Van Idour who have been unable or unwilling to comply with Affiant's requests and/or decisions concerning Affiant's defense.

Further Your Affiant Sayeth Naught.
Dated This 13th Day Of January, 2008.

Subscribed And Sworn to before me, a Notary Public of Idaho,
this 13th day of January, 2008.

~~John Brannon Branigh III~~
Leotis Brannon Branigh III

Defendant

Notary Public of Idaho

~~John Brannon Branigh III~~

Notary Public of Idaho

Residing at: CHL WA

My Commission Expires 1138
6-28-2011

AFFIDAVIT IN SUPPORT OF TERMINATION OF THE SERVICES
OF FITZGERALD AND VAN IDOUR, ATTORNEYS AT LAW

Leotis Brannon Branigh III
P.O. Box 896
Nez Perce County Jail
Lewiston, ID 83501
Defendant

FILED

2008 JAN 18 PM 3 55

PATY O. WEEKS
CLERK OF THE DIST.

[Signature]
DEPUTY

In The District Court Of The Second Judicial District Of
The State Of Idaho, In And For The County Of Nez Perce.

State Of Idaho
Plaintiff,

v.

Leotis Brannon Branigh III
Defendant

Case No. CA2007-08107

Notice Of Termination Of
The Services Of Fitzgerald
And Van Idour, Attorneys
At Law.

Notice

Notice is hereby given: Defendant, Leotis Brannon Branigh III, does hereby terminate the services of Fitzgerald and Van Idour Attorneys at Law on the grounds and for the reasons set forth in Defendant's Affidavit in Support of Notice Termination Services.

Dated and Respectfully Submitted This 18th Day of January, 2008

[Signature]
Leotis Brannon Branigh III
Defendant

NOTICE OF TERMINATION OF THE SERVICES OF FITZGERALD
AND VAN IDOUR, ATTORNEYS AT LAW

1139

Charles E. Kovis
Attorney at Law
312 South Washington Street
Post Office Box 9292
Moscow, Idaho 83843
Telephone: (208) 882-3939
Fax: (208) 882-5379
I.S.B. # 4700
ckovis@turbonet.com

FILED
2008 MAR 13 AM 11 14
PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty Weeks
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,	)	CASE NO. CR-07-8107
)	
Plaintiff,	)	WAIVER OF SPEEDY TRIAL
)	
vs.)	
)	
LEOTIS B. BRANIGH III,)	
)	
Defendant.)	
)	

Leotis B. Branigh III, after being advised of his constitutional and statutory speedy trial rights, hereby waives his right to a speedy trial until June 23, 2008.

DATED this 13th day of March, 2008.

Leotis B. Branigh III
LEOTIS B. BRANIGH III

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March,
2008, a true and correct copy of this *Waiver of Speedy
Trial* was hand-delivered via courthouse basket to:

DANIEL SPICKLER
PROSECUTING ATTORNEY
NEZ PERCE COUNTY COURTHOUSE
LEWISTON, IDAHO 83501



Charles E. Kovis

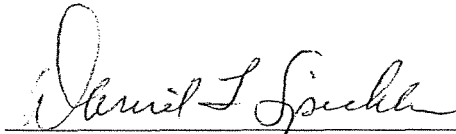
1142

3. I have been provided information from reliable sources that indicate that the Defendant may seriously lack the ability to assist in his own defense. The Defendant has a history of mental instability which is reflected in his criminal history and encounters with law enforcement. Over the period of his incarceration, defendant has been known to threaten to kill his original public defender, or to have "friends" somehow injure the public defender's family. Defendant has repeatedly stated he is the object of a "conspiracy to get him", however the players involved and motivations of the "conspiracy" frequently change. Over the last two months, defendant's behavior has deteriorated into frequent bouts of violence, causing property damage to the jail, endangering the health and safety of jail staff and other inmates, and ultimately requiring jail personnel to resort to tasing defendant and resulting in defendant being bound and chained to a restraint chair. (See *Affidavit of Lt. Steve Lutes, Jail Commander, Nez Perce County Sheriff's Office*). Your affiant believes that there is reasonable cause to suspect that defendant is suffering from mental illness that may restrict his ability to assist in his own defense in a meaningful way. Such mental illness may include but not be limited to sociopathic personality, delusional ideation, and paranoid/schizophrenic behaviors.

4. Due to the seriousness of the charges, and the concern that the Defendant is not fully comprehending the situation, I believe that there needs to be further evaluation or investigation into the stability of the Defendant to stand trial.

Further your affiant saith not.

DATED this 9th day of May 2008.



DANIEL L. SPICKLER, Affiant
Prosecuting Attorney

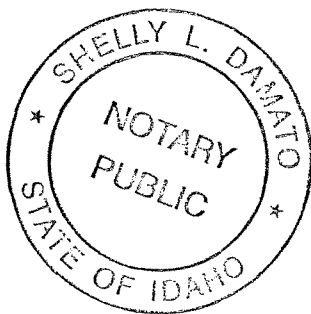
STATE OF I D A H O)


: ss.

County of Nez Perce)

I, SHELLY L. DAMATO, a notary public, do hereby certify that on this 9th day of May 2008, personally appeared before me DANIEL L. SPICKLER, being first duly sworn upon oath deposes and says:

That he has read the foregoing document, knows the contents thereof, and hereby certifies that the aforementioned document is true and correct to the best of his knowledge.




NOTARY PUBLIC in and for Idaho residing
at REUWSTON therein.
MY COMMISSION EXPIRES: 9/26/09

3. Attached as Exhibit "A" and incorporated herein as though fully set forth is a summary of the incidents that have occurred along with the Incident Reports involving inmate, Leotis B. Branigh III, who is currently be held on First Degree Murder charges.

Further your affiant saith not.

DATED this 9 day of May 2008.

LT. Steve Lutes

LT. STEVE LUTES, Affiant

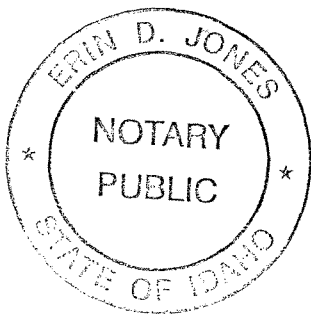
STATE OF I D A H O)

: ss.

County of Nez Perce)

I, Erin D. Jones, a notary public, do hereby certify that on this 9th day of May 2008, personally appeared before me LT. STEVE LUTES, being first duly sworn upon oath deposes and says:

That he has read the foregoing document, knows the contents thereof, and hereby certifies that the aforementioned document is true and correct to the best of his knowledge.



Erin D. Jones
NOTARY PUBLIC in and for Idaho residing
at Lewiston therein.
MY COMMISSION EXPIRES: 7-11-08

EXHIBIT "A"

05/08/2008
14:29

Nez Perce County Sheriff
Jail Log:

Page: 427
1

Event Number: 626034 Active
Name ID: 27654 No Contact Order+

Last: BRANIGH	III	First: LEOTIS	Mid: BRANN
Addr: [REDACTED]		Phone: (208) [REDACTED]	
City: Clarkston	ST: WA	Zip: 99403	DOB: [REDACTED] SSN: [REDACTED]

Time/Date of Event: 10:44:37 05/08/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer:
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

05-08-2008

On todays date an administrative decision was made to place inmate Leotis Branigh on administrative segregation. This decision was made based on numerous events and disturbances caused by Mr. Branigh starting in February of 2007. At risk in our opinion is the very safety and security of the Jail's physical operation, it's inmates, staff and visitors. A series of reports have been filed as IDP's in Mr. Branigh's file but I will summarize the events as we witnessed them.

On 10-22-07 Mr. Branigh was overheard making comments including "I bet I can fit through the opening at outdoor rec if I got a good run at it" This refers to the chain link gate to our outdoor rec yard. He also told other inmates he wished he had kept his handcuff keys before coming to the jail. These statements were made by Branigh while outside the jail in the outdoor rec yard

On 12-04-2008 Branigh was charged with a felony weapons offense after finding a shank in his mattress in his cell during a routine cell search. The shank was 8" long and 2" wide.

On 02-08-2008 Branigh informed Deputies he no longer wanted to see his lawyer anymore and told us to tell other Deputies that he might hurt his lawyer stating "I would rather do 5 years in prison for beating the shit out of my lawyer than life for something I didn't do.

On 02-10-08 An inmate asked to be moved from the max tank cell. The inmate said he was being threatened by Leotis Branigh.

On 02-22-08 Attorney William Fitzgerald requested that Branigh be secured in

belly chains and shackles before talking with his client as he feared for his safety.

On 02-27-08 Branigh comments about hanging another inmate with a sheet tied to the tank gate so that guards would think they were trying to stop the gate and would keep pulling on the lever choking the inmate further. On the same date Branigh's lawyer requested that his client be restrained again before speaking with him.

On 04-02-08 Branigh becomes physically destructive and disrespectful while complaining about meal portions with deputies. He kicks garbage can across the cell and yells obscenities at officers.

On 04-17-08 Branigh, angry about meal portions, rips TV off of shelf and smashes it into pieces on the floor.

Same date Branigh and others in tank riot throwing wet toilet paper and garbage all over cell. Then Branigh faced off with deputies in a challenging and aggressive manor.

Same night on clean up duty Branigh breaks window out of front of court house. Branigh is charged with felony destruction of jail property and attempted escape.

On 04-18-08 A shake down was done in the tank after a mop bucket bale is found missing. Long and deadly pieces of the bucket bail are found in the door frame of Branigh's cell with a mirror. Pieces of glass found in Branigh's cell as well.

On 05-04-08 Deputies witness Branigh reaching through bars trying to fish for more broken glass using a property box lid and string.

On 05-05-08 Branigh makes treats to officers that if he isn't given more outdoor rec he'll "start some serious problems so at least he'll have something to do when we come to take him."

On 05-06-08 Branigh is moved to A-Blk segregation as administration felt his actions were escalating. Within minutes of being moved into solitary, Branigh begins pounding and beating on walls and bunks. Covers his only window to the cell and sets fire to toilet paper and legal materials. Later Branigh is found to have pulled a bunk bolted to concrete out of the wall. Branigh was extracted from his cell by force while shouting he would kill officers. A taser was used on Branigh and he fought all the way to another holding cell. Branigh charged with arson.

On 05-07-08 Branigh begins beating on walls of east 2 cell and breaks through the wall into a plumbing chase causing a good deal of damage to the cell.

All the above summaries are documented by various officers in the jail several less important events were also documented in greater detail. At this time we feel that Branigh is out of control and poses a serious threat to the jail property and to staff.

Per Idaho jail standards, 08.02, The facility administrator or the senior officer on duty may order immediate segregation when necessary to protect the

inmate or others. This has now been done.

Per Idaho jail standards, 08.04 The facility administrator may place an inmate in administrative segregation when the inmate's presence in the general population poses a serious threat to life, property, self, staff or other inmates. Administrative segregation may be warranted when (a) The inmate is segregated pending investigation or trail for a criminal act allegedly committed while in custody. All of these conditions apply to Branigh.

08.05 The status of inmates in administrative segregation shall be reviewed by the classification officer after 7 days and every 30 days thereafter.

08.07 Any cell for segregation shall provide living conditions which are approximately equivalent to the conditions in general population. An inmate may be placed in a unequipped cell only if it is necessary to prevent suicide or other self destructive acts or to prevent damage to the cell or equipment. We submit that after the extensive damage caused by Branigh in a total of three cells we are within Jail Standard parameters to house Branigh wherever we can find a secure enough place. That is East 2 at this time.

In 08.08 Inmates shall be able to maintain acceptable levels of personal hygiene. Branigh is now in a cell with toilet, sink, hot and cold water and all hygiene supplies provided to all inmates.

Regarding Idaho jail standards section 08.09, Branigh has been provided a cordless phone in his cell since moving to east 2. The phone and visits with legal counsel will not be denied to Branigh in anyway.

As to 08.10, we will evaluate special programs for Branigh as they come up while adhering to the section that states that such participation "may not threaten the safety and security of the facility".

And, per 08.11 of the Jail Standards, no item will be denied Branigh without a written report made available to the facility administrator.

A copy of this missive will be given to inmate Branigh along with chapter 8 of the Idaho Jail Standards most recent revision. As of this point Branigh is on Admin Seg pending a review of the classification officer on 05-'13-08.

CHAPTER 8

SPECIAL MANAGEMENT INMATES

- 08.01 The facility shall have written policy and procedure to govern the management of inmates housed in administrative segregation, protective custody, and disciplinary detention.
- 08.02 The facility administrator or the senior officer on duty may order immediate segregation when necessary to protect the inmate or others. The segregation shall be reviewed within three (3) days, excluding weekends and holidays, by the classification officer, disciplinary officer, or other appropriate authority having jurisdiction over the type of segregation ordered.
- 08.03 Inmates may be placed in disciplinary detention for a rule violation only after a full hearing before the disciplinary officer or committee as provided in Chapter 13. Except in the most serious cases, an inmate shall not be kept in disciplinary detention for more than fifteen (15) days for one offense, but in no case shall the period of detention exceed thirty (30) days for one incident without the specific written approval of the facility administrator.
- 08.04 The classification officer or the facility administrator may place an inmate in administrative segregation or protective custody when the inmate's presence in the general population poses a serious threat to life, property, self, staff or other inmates. Administrative segregation may be warranted when:
- a. The inmate is segregated pending investigation or trial for a criminal act allegedly committed while in custody;
 - b. The inmate is segregated pending transfer;
 - c. The inmate requests or requires segregation for his/her own protection;
 - d. The facility physician orders segregation for medical reasons; or
 - e. The inmate's behavior while confined in disciplinary detention indicates the need for further segregation from the general population upon release from disciplinary detention.
- 08.05 The status of inmates in administrative segregation or protective custody shall be reviewed by the classification officer after seven (7) days and then every thirty (30) days thereafter.
- 08.06 Inmates in administrative segregation or protective custody shall be released only after a review by the classification officer or facility administrator.
- 08.07 Any cell used for segregation shall provide living conditions which are approximately equivalent to the conditions in general population. An inmate may be placed in an unequipped cell only if it is necessary to prevent suicide or other self-destructive acts or to prevent damage to the cell or equipment.
- 08.08 Segregated inmates shall be able to maintain acceptable levels of personal hygiene.

- 08.09 The access of inmates in disciplinary detention to telephone services may be restricted to contact with legal counsel. Inmates in administrative segregation or protective custody shall have access to telephone services to include contact with legal counsel and as otherwise authorized by the facility administrator.
- 08.10 Inmates in administrative segregation or protective custody shall have access to programs and services to the same extent as the general population, except where such participation threatens the safety and security of the facility or community.
- 08.11 Inmates in administrative segregation or protective custody shall not be deprived of an authorized item, service, or activity, except when necessary to ensure the inmate's safety or the well being of staff and other inmates. When items, services, or activities are withheld, a written report shall be made of the action to the facility administrator. (Revised 6/98)

05/08/2008
02:52

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 625985
Name ID: 27654 No Contact Order+

Active

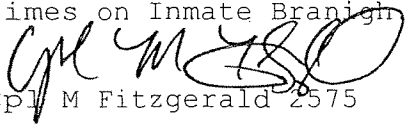
-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: (208) [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

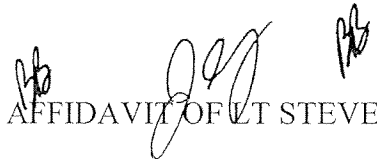
Time/Date of Event: 02:39:59 05/08/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 1.00
Officer: Fitzgerald Mark
Booking Number: 07-J3343
Description:
(See below)

Description:

Upon reporting for duty 5/7/2008 at 2200 hrs, I noticed on the camera to east cell 2, Leotis Branigh's cell, that he was picking at the wall. Deputies Richardson and Denton ended up having conversations with Branigh and stated that he was calm and coherent. After Swing shift left, I noticed on the camera that he was hard at work on the wall above the toilet in the cell. At lockdown as we were getting the keys to lock all cells down for the night, I noticed Branigh get a very large chunk of sheetrock from the wall which appeared to be at least 10 inches long by 4 inches wide. I went back and asked him what he was doing. He stated that he was trying to get back to the tank. Deputy White and myself then went and locked down the jail for lights out. Upon return to the booking area. We observed Inmate Branigh continue to work on the wall. At one point I felt that things were starting to get very seroius as he seemed to have a very large hole in the wall. I then noticed him get a piece of metal from the hole. He then sat on the bunk and bent the metal into a straight piece and was using pieces of sheetrock and the floor to apparently sharpen it. I then telephoned Sgt McGee at home and informed him of the situation. After our conversation, I phoned Lt Lutes as well and also informed him. I then decided to call Patrol Cpl Blinn and inform him af the possible need of patrol for an extraction on Branigh. Cpl Blinn asked me to inform Lewiston Police as well. I then Spoke With Sgt Rogers of LPD and informed him of the possibility of an agency assist to help with Branigh should the need arise. I was informed by all that assistance would be provided if necessary.

I then decided that the doors to all cells in east be locked down as well as the gate to the east hallway for all possible security. As of 0300hrs, Inmate Branigh finally lay down to sleep. A watch will be conducted at all times on Inmate Branigh.


Cpl M Fitzgerald 2575


AFFIDAVIT OF LT STEVE LUTES

1152

05/08/2008
19:17

Nez Perce County Sheriff
Jail Log:

302
Page: 1

Event Number: 626080 Active
Name ID: 27654 No Contact Order+

Last: BRANIGH III First: LEOTIS Mid: BRANN
Addr: [REDACTED] Phone: [REDACTED]
City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED]

Time/Date of Event: 17:30:00 05/08/2008 Treatment Date:

Type of event: IDP Inmate Disiplinary Problems

Quantity: 0.00

Officer: Roberts Mike

Booking Number: 07-J3343

Description:

(See below)

Description:

Todays date 05-08-08 at approx. 17:30 hrs. Deputy J. Denton noticed that inmate branigh had dug into the wall in east cell two and broken off some metal rebar material. Inmate Branigh was using these pieces of metal to dig at the cell wall. I went back to the east cell two door and asked Branigh to give me the two ten inch pieces of rebar . Branigh complied with my request.

I contacted LT. Lutes and advised him of the on going problem with Branigh. LT.Lutes stated to contact SGT.Wilson and have him respond to the jail for a possable cell extraction. SGT.Wilson responded to the jail at my request. SGT.Wilson spoke to Branigh about what was going on and if he would comply Branigh stated he would. Branigh was placed into belly chains and leg irons his cell was cleaned up and fresh bedding placed back into east cell two.

CPL.Mike Roberts

[Signature: CPL Mike Roberts]

[Signature: JJJ Kf]

[Signature: BB]

05/08/2008
19:34

Nez Perce County Sheriff
Jail Log:

565
Page: 1

Event Number: 626081 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 19:22:29 05/08/2008 Treatment Date:

Type of event: IDP Inmate Disiplinary Problems

Quantity: 1.00

Officer: Denton John

Booking Number: 07-J3343

Description:

(See below)

= = = = =

Description:

At aprox. 1600 hrs. I went back to Branigh's cell and asked him if he would give the piece of metal that he had in his cell, he complied and handed me a piece of metal that was about 5 inches long and an inch wide. It looked like it had been sharpened to a point, he said it was a digging tool. Later around 1730 while he was digging at the wall I asked him to stop. He said he wasn't done yet. I said what do you mean, and he said he was trying to get back to the tank. I asked him if he had any more tools to give me and he handed me another piece of metal that was about 4 inches long and 2 inches wide. I went back to the office and was watching the monitor and saw him as he had broken 2 pieces of rebar off the wall that were about 10 inches long. hen I went back there to ask him for them he said no you might have to come in here to get these. I went back in the office and told Cpl. Roberts who went out to speak with inmate Branigh. Branigh complied with his request and gave him the pieces of rebar.
END OF REPORT

Dep. [Signature]

JJ

AB

05/08/2008
22:35

Nez Perce County Sheriff
Jail Log:

Page: 565
1

Event Number: 626087 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 22:17:38 05/08/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 1.00
Officer: Denton John
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

At 2000 hrs. Sgt. Wilson, and Cpl. Wright responded to the jail at our request. Inmate Branigh had gotten the lock open to the belly chains and was swinging them as a weapon. Cpl. Roberts had already spoken to him and he would not comply with our request to allow us to chain him back up. Sgt. Wilson spoke with inmate Branigh and inmate Branigh agreed to comply to be strapped into the restraint chair. We placed him into the chair and strapped him in without incident. END OF REPORT

Dep. Denton

ggf

AB

05/08/2008
22:36

Nez Perce County Sheriff
Jail Log:

302
Page: 1

Event Number: 626088 Active
Name ID: 27654 No Contact Order+

-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 20:00:00 05/08/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer: Roberts Mike
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

APPROX. 20:00 HRS. INMATE BRANIGH HAD POPPED THE PADLOCK ON HIS BELLY CHAINS AND REFASTENED THE LOCK TO THE FRONT OF THE BELLY CHAINS MAKING A THREE FOOT WEAPON THAT HE COULD SWING AT SOMEONE. WHITH THE LOCK AT THE END AS WELL AS A PICE OF METAL ALSO ATTACHED AT THE END OF THE CHAIN. SGT.WILSON,CPL.WRIGHT RESPONDED TO THE JAIL AND ASSISTED WITH BRANIGH. INMATE BRANIGH WAS READY FOR A FIGHT SPREADING SHAMPOO AND WATER IN FRONT OF THE DOOR TO HIS CELL. SGT.WILSON STATED TO BRANIGH THAT HE HAD A TASER AND WOULD USE IT IF NEED BE . INMATE BRANIGH COMPLIED WITH THE INSTRUCTIONS HE WAS SECURED AND PLACED INTO THE RESTRAINT CHAIR.

CPL.M.ROBERTS

Cpl M Roberts

[Signature] AB

Page: 604

Last: BRANIGH	III	First: LEOTIS	Mid: BRANN
Addr: 2006 13TH st		Phone: (208) 305-8257	
City: Clarkston	ST: WA	Zip: 99403	DOB: 03/12/1976 SSN: 518-08-3078

Description:

At 1915 hrs I arrived back to the jail from a transport. I was informed that Inmate Branigh had started back at tearing the wall above toilet in the East 2 holding cell. Inmate Branigh had been retrieving several metal objects from inside wall which he would sharpen on the floor. Sgt Wilson had came to the jail to assist with shackling Branigh so we could clean the wall debris that was all over the floor. Corp Roberts, Deputy Denton, Deputy J. Martin, Sgt. Wilson and myself went to the East 2 cell. Sgt Wilson asked Branigh if he would cooperate with us while putting him in restraints. Inmate Branigh agreed and Sgt. Wilson asked Inmate Branigh to turn around and place his hands on his head which Inmate Branigh did. A belly chain with handcuffs and leg chains were put on Inmate Branigh. Inmate Branigh was placed in another cell while a trustee, Deputy J. Martin, Deputy Denton and myself cleaned the East 2 cell. Inmate Branigh was then placed back into the East 2 cell with the restraints still on. Inmate Branigh was able to climb up the bars covering the window. Then Branigh went to the hole he had made in the wall and ripped off a piece to wire from inside the wall. Branigh then started picking at the locks of his restraints with the wire. After maybe 20 to 30 minutes Branigh managed to pick the lock on the belly chains. Inmate Branigh then started swinging the chain with the lock on the end. This appeared to be Branigh testing the chain with the lock on the end as a weapon. Corp. Roberts, Deputy Martin, Deputy Denton and myself responded to the East 2 cell to asked Branigh if he would cooperate with placing the restraints back on him and he was told the next option would be the restraint chain. Inmate Branigh ducked against the wall and suggested that we were going to have to fight him if we came in. We responded to booking area and informed patrol for assistance. Branigh meanwhile placed a towel around his face, a property box lid in the front of his pants, and squirted water and shampoo on the floor. This appeared to be Branigh preparing for us to enter the cell. Corp Roberts, Deputy Martin, Deputy Denton, Sgt Wilson, Corp Wright, and myself went to the East 2 cell.

Sgt Wilson informed Inmate Branigh that he would lose the light and a taser would be used if we had to. Branigh agreed to cooperate and he was placed into the restraint chair and left in the East 2 cell. A few minutes later I watched Branigh free himself from the arm restraints in the chair. We went back and placed Branigh in handcuffs behind his back and he was left in the restraint chair.

Deputy Richardson #2564

Deputy Richardson

BB

05/09/2008
07:29

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 626154 Active
Name ID: 27654 No Contact Order+

Last: BRANIGH III First: LEOTIS Mid: BRANN
Addr: [REDACTED] Phone: [REDACTED]
City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED]

Time/Date of Event: 06:49:58 05/09/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 1.00
Officer: Fitzgerald Mark
Booking Number: 07-J3343
Description:
(See below)

Description:

On arrival for my shift at 2130hrs on 5/8/08, I was briefed as of the situation with Branigh. I noticed that he was in the restraint chair with leg shackles and handcuffed behind his back.

At approx 0030 hrs, Branigh asked for some ibuprofen. I took two ibuprofens and a glass of water and Deputy White, Gunter and I made entry where i placed the pills in his mouth and held the water glass for him. this went without incident.

At about 0130hrs as I was observing him on camera, I noticed he had his right hand twisted around to the front while still cuffed and was holding his property box lid with what appeared to be a comb attached to it and was fidgeting around the corner of the window bars. I told Deputies White and Gunter that he was messing with that area last night when he was destroying the wall. I informed them we needed to go check out what he was doing. We then made entry into the cell and I pulled the restraint chair back and then checked out the window where I found a piece of stiff approx 20 gauge metal wire protruding from the crack in the frame. I retrieved this wire and Branigh stated, "damn it, I almost had it." we then cleared the cell.

At approx 0430 hrs, I had Cpl Blinn and Deputy Rodriguez come to the jail so that we could offer Branigh a chance to go to the bathroom. I asked Branigh if he had to go and he said yes. I then asked if he would remain calm and not try anything and he stated he would. Deputies White, Gunter and myself then entered the cell with Cpl Blinn and Rodriguez observing from the doorway. We removed the straps on Branigh and I took of the cuffs long enough for him to go to the bathroom. Afterwards he was recuffed and placed back into the restraints without incident.

At 0700 hrs, Cpl Felton, White, Gunter and myself served breakfast to Branigh. I remved the handcuffs from him and kept the shoulder straps on him and Deputy White and Gunter stood in the doorway and watched. After eating,

Branigh was resecured in the chair without handcuffs but with the arm straps instead. This all was achieved without incident.

Cpl M Fitzgerald
Cpl M Fitzgerald

PL

Law Supplemental Narrative:

Seq Name Date Supplemental Narratives
1 Messelt Kevin 15:58:16 05/06/2008 Narrative
NEZ PERCE COUNTY SHERIFF'S DEPARTMENT CAP SHEET
AND CASE DISPOSITION SHEET

DATE:

IN CUSTODY:[XX] YES
 [] NO

=====

DEFENDANT:

Name: Branigh, Leotis Brannon III
Address: Nez Perce County Jail
Telephone:
Date of Birth: [REDACTED]
Social Security Number: [REDACTED]

=====

NEZ PERCE COUNTY SHERIFF'S DEPARTMENT CASE NUMBER: 08-N2475
OTHER AGENCIES RELATED CASE NUMBERS:
DATE OF INCIDENT: 05/06/2008
TIME OF INCIDENT: 1433 hours

=====

CHARGES:

1. Arson First Degree 18-802(2)
2. Injuring Jails 18-7018
- 3.

=====

WITNESSES:

1. Deputy Hawkes
2. Deputy Leavitt
3. Sgt Jack McGee
4. Cpl Kelsey
5. Cpl Mike Roberts
6. Deputy K. Messelt
- 7.

=====

CO-DEFENDANTS:

- 1.
- 2.
- 3.
- 4.

=====

EVIDENCE:

1. Witness statements
2. Photographs of Damage
- 3.
- 4.
- 5.
- 6.
- 7.

=====

SUMMARY (PROBABLE CAUSE): At approximately 1433 hours on 05/06/2008 Leotis Branigh set fire to toilet paper in his cell in B Block of the Nez Perce County Jail. Leotis Branigh had been causing damage to his cell for a period of time enough to disrupt court proceedings on the floor directly beneath B Block. Force was needed to control Branigh, who fought with jail deputies who made entry into Branigh's cell. The cell was filled with smoke and burning paper. Other inmates in cells adjacent to Branigh's cell were forced to retreat from the area due to the smoke. Also during the course of attempting to restrain Branigh, he attempted to take a set of handcuffs from one of the jail deputies. A TASER had to be deployed to restrain Branigh as he was fighting with deputies and would not comply with verbal commands. After Branigh was removed from the cell, evidence of fire damage and damage to walls and floors were found. The lower steel bed frame has been forcibly removed from it's mounting, and Branigh was using the bed frame to strike the walls of his cell.

=====

RECOMMENDATION: [] WARRANT
[XX] SUMMONS

=====

OFFICERS/INVESTIGATORS:

1. Kevin Messelt
- 2.
- 3.

=====

PROSECUTOR to POLICE:

DATE:

- [] Charges filed
- [] Warrant
- [] Referred to Juvenile Services
- [] Prosecution delayed for further investigation
- [] Prosecution Declined
- [] Summons

Assigned Prosecutor:

=====

FURTHER INVESTIGATION REQUESTED:

- 1.
- 2.
- 3.

Police Follow-up due by:

=====

PROSECUTION DECLINED: (EXPLANATION)

=====

CASE DISPOSITION:

- [] Guilty plea as charged
- [] Guilty plea to other charge:
- [] Guilty verdict
- [] Not Guilty verdict
- [] Other:

Narrative:

Nez Perce County Sheriff's Department

Date and Time: 05/06/2008 1433 hours

Report Type: Arson/Injury to Jail

Reporting Officer: Deputy K. Messelt #2533

On the above date and time I was instructed to respond to the jail in reference to a possible fire in B block. Upon arriving I was advised that Leotis Branigh has been damaging his cell, and had possibly started a fire. I responded with Lt Lutes to the area of B Block. As I was approaching the B Block area I could smell a strong odor of smoke, and as I got closer to B Block the odor became stronger. Once outside the B Block door, I waited with Lt Lutes for other jail deputie to arrive and conduct a cell extraction of Leotis Branigh. I was also advised that Judges Merica and Gaskill had both directed that Leotis be stopped from damaging the cell, as the noise was disrupting court.

Once sufficient deputies arrived, I stood by with a fire extinguisher as they made entry into Branigh's assigned cell. The cell was filled with smoke, and I observed fire damage to the inside of the cell door. I also observed that there had been a pile of toilet paper burning near the door. As the jail deputies made entry, I observed Leotis resist the deputies, and at one time grabbed a set of handcuffs from Sgt McGee. Sgt McGee held the handcuffs firmly to avoid Branigh from taking them. All the while Branigh was yelling obscenities and threatening to kill all deputies who were attempting to secure him. As the jail deputies were attempting to secure Branigh, I withdrew a TASER, and due to the close quarters in the cell, I removed the cartridge for anticipation of using the TASER for a Contact Stun. Once the jail deputies had Branigh pinned to a top bunk, he continued to resist, and would not release his grip on Sgt McGee's handcuffs. Several times Branigh was ordered to stop resisting. Branigh responded by yelling, "it's going to be like this every time you fucking niggers come in here mother fuckers".

After several moments I asked Sgt McGee that since Branigh was not complying, if he wanted me to apply a TASER. Sgt McGee responded yes, at which time I warned Branigh that if he did not stop resisting, and comply with jail deputies commands, I would deploy a TASER. Branigh responded again with several obscenities and again stated, "it will be like this then you pussy nigger mother fuckers". At that time I placed the end of my Taser to Branigh's left shin and deployed a contact stun. The TASER made Branigh comply, but once the TASER was disengaged, Branigh resumed his resistance. I again deployed a contact stun to Branigh at which time he released his grip on Sgt McGee's handcuffs and complied with commands.

Once Branigh was secured, he was removed from the cell and moved to

different cell at the other end of the jail. Afterwards I assisted jail staff with searching for weapons and contraband, primarily a source which Branigh used to start the fire. An Inmate in the adjacent cell stated he heard the toilet flush in Branigh's cell seconds before the jail deputies made entry. We were unable to locate a source that Branigh used to start the fire. I took photographs of the fire damage to the door, and the lower bunk which Branigh had torn loose from the floor. These photos were placed into evidence in the form of a compact disk. Copies of the photos will be forwarded to the prosecutor's office with this report.

Kevin Messelt #2533
Investigator

05/07/2008
14:37

LAW Incident Table:

498
Page: 1

Incident Number: 08-N2475

Nature: Arson

Case Number:

Image:

Addr= 1230 MAIN ST

Area: D2B

E OF 8TH, W OF

City: Lewiston

ST: ID Zip: 83501

Contact: 33

+-- Complainant&

211

| Lst: NEZ PERCE COUNTY SHERIFF

Fst:

Mid:

| DOB: / /

SSN: - -

Adr= 1221 F Street

| Rac:

Sx:

Tel: (208)799-3131

Cty: Lewiston

ST: ID Zip: 83501

Offense Codes: ARAO

Reported: ARAO Observed: ARAO

Circumstances:

Rspndg Officers: Messelt Kevin

Rspnsbl Officer: Messelt Kevin Agency: NPCS

CAD Call ID: 0805-0140

Received By: Blackham Erinn

Last RadLog: 14:35:04 05/06/2008 CMPLT

How Received: O Officer Report

Clearance: RPT Written Incident Repo

When Reported: 14:33:35 05/06/2008

Disposition: CLO Disp Date: 05/06/2008

Occurrd between: 14:33:35 05/06/2008

Judicial Sts:

and: 14:33:35 05/06/2008

Misc Entry:

MO:

Narrative: (See below)

Supplement: (See below)

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	75	05/06/2008	LUTES, STEVEN GRANT	Involved
NM	81	05/06/2008	ROBERTS, MICHAEL JAMES	Involved
NM	211	05/06/2008	NEZ PERCE COUNTY SHERIFF,	*Complainant
NM	24978	05/06/2008	HAWKES, KENNETH LAVERN JR	Involved
NM	27654	05/06/2008	BRANIGH, LEOTIS BRANNON III	Suspect
NM	64791	05/06/2008	LEAVITT, DANIEL BOYD	Involved
NM	82165	05/06/2008	MC GEE, JACK CLINT 3RD	Involved
CA	0805-0140	05/06/2008	14:33 05/06/2008 Arson	*Initiating Call

LAW Incident Offenses Detail:

Offense Codes

Seq Code

Amount

1 ARAO Arson, All Other

0.00

LAW Incident Responders Detail

Responding Officers

Seq Name

Unit

1 Messelt Kevin 33

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
14:35:04 05/06/2008	1	33	CMPLT	NPCS3	NPCS	incid#=08-N2475 Completed call
14:34:00 05/06/2008	1	33	ARRVD	NPCS3	NPCS	incid#=08-N2475 On-site call=6

05/09/2008
07:57

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 626034 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 10:44:37 05/08/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer: McGee Jack
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

05-08-2008

On todays date an administrative decision was made to place inmate Leotis Branigh on administrative segregation. This decision was made based on numerous events and disturbances caused by Mr. Branigh starting in February of 2007. At risk in our opinion is the very safety and security of the Jail's physical operation, it's inmates, staff and visitors. A series of reports have been filed as IDP's in Mr. Branigh's file but I will summarize the events as we witnessed them.

On 10-22-07 Mr. Branigh was overheard making comments including "I bet I can fit through the opening at outdoor rec if I got a good run at it" This refers to the chain link gate to our outdoor rec yard. He also told other inmates he wished he had kept his handcuff keys before coming to the jail. These statements were made by Branigh while outside the jail in the outdoor rec yard

On 12-04-2008 Branigh was charged with a felony weapons offense after finding a shank in his mattress in his cell during a routine cell search. The shank was 8" long and 2" wide.

On 02-08-2008 Branigh informed Deputies he no longer wanted to see his lawyer anymore and told us to tell other Deputies that he might hurt his lawyer stating "I would rather do 5 years in prison for beating the shit out of my lawyer than life for something I didn't do.

On 02-10-08 An inmate asked to be moved from the max tank cell. The inmate said he was being threatened by Leotis Branigh.

On 02-22-08 Attorney William Fitzgerald requested that Branigh be secured in

belly chains and shackles before talking with his client as he feared for his safety.

On 02-27-08 Branigh comments about hanging another inmate with a sheet tied to the tank gate so that guards would think they were trying to stop the gate and would keep pulling on the lever choking the inmate further.

On the same date Branigh's lawyer requested that his client be restrained again before speaking with him.

On 04-02-08 Branigh becomes physically destructive and disrespectful while complaining about meal portions with deputies. He kicks garbage can across the cell and yells obscenities at officers.

On 04-17-08 Branigh, angry about meal portions, rips TV off of shelf and smashes it into pieces on the floor.

Same date Branigh and others in tank riot throwing wet toilet paper and garbage all over cell. Then Branigh faced off with deputies in a challenging and aggressive manor.

Same night on clean up duty Branigh breaks window out of front of court house. Branigh is charged with felony destruction of jail property and attempted escape.

On 04-18-08 A shake down was done in the tank after a mop bucket bale is found missing. Long and deadly pieces of the bucket bail are found in the door frame of Branigh's cell with a mirror. Pieces of glass found in Branigh's cell as well.

On 05-04-08 Deputies witness Branigh reaching through bars trying to fish for more broken glass using a property box lid and string.

On 05-05-08 Branigh makes treats to officers that if he isn't given more outdoor rec he'll "start some serious problems so at least he'll have something to do when we come to taze him."

On 05-06-08 Branigh is moved to A-Blk segregation as administration felt his actions were escalating. Within minutes of being moved into solitary, Branigh begins pounding and beating on walls and bunks. Covers his only window to the cell and sets fire to toilet paper and legal materials. Later Branigh is found to have pulled a bunk bolted to concrete out of the wall. Branigh was extracted from his cell by force while shouting he would kill officers. A taser was used on Branigh and he fought all the way to another holding cell. Branigh charged with arson.

On 05-07-08 Branigh begins beating on walls of east 2 cell and breaks through the wall into a plumbing chase causing a good deal of damage to the cell.

All the above summaries are documented by various officers in the jail several less important events were also documented in greater detail. At this time we feel that Branigh is out of control and poses a serious threat to the jail property and to staff.

Per Idaho jail standards, 08.02, The facility administrator or the senior officer on duty may order immediate segregation when necessary to protect the

inmate or others. This has now been done.

Per Idaho jail standards, 08.04 The facility administrator may place an inmate in administrative segregation when the inmate's presence in the general population poses a serious threat to life, property, self, staff or other inmates. Administrative segregation may be warranted when (a) The inmate is segregated pending investigation or trail for a criminal act allegedly committed while in custody. All of these conditions apply to Branigh.

08.05 The status of inmates in administrative segregation shall be reviewed by the classification officer after 7 days and every 30 days thereafter.

08.07 Any cell for segregation shall provide living conditions which are approximately equivalent to the conditions in general population. An inmate may be placed in a unequipped cell only if it is necessary to prevent suicide or other self destructive acts or to prevent damage to the cell or equipment. We submit that after the extensive damage caused by Branigh in a total of three cells we are within Jail Standard parameters to house Branigh wherever we can find a secure enough place. That is East 2 at this time.

In 08.08 Inmates shall be able to maintain acceptable levels of personal hygiene. Branigh is now in a cell with toilet, sink, hot and cold water and all hygiene supplies provided to all inmates.

Regarding Idaho jail standards section 08.09, Branigh has been provided a cordless phone in his cell since moving to east 2. The phone and visits with legal counsel will not be denied to Branigh in anyway.

As to 08.10, we will evaluate special programs for Branigh as they come up while adhering to the section that states that such participation "may not threaten the safety and security of the facility".

And, per 08.11 of the Jail Standards, no item will be denied Branigh without a written report made available to the facility administrator.

A copy of this missive will be given to inmate Branigh along with chapter 8 of the Idaho Jail Standards most recent revision. As of this point Branigh is on Admin Seg pending a review of the classification officer on 05-`13-08.

Law Supplemental Narrative:

Supplemental Narratives

Seq Name Date Narrative

2 Roberts Mike 19:43:44 05/08/2008

Nez Perce County Sheriff Supplemental Report

ON 05-06-08 AT APPROX. 14:00 HRS. SGT. MCGEE INFORMED SWING AS WELL AS DAY SHIFT THAT WE WERE GOING TO MOVE INMATE BRANIGH TO B-BLOCK. THE MOVE WENT WITH OUT A PROBLEM UNTILL TWENTY MINUTES LATER BRANIGH HAD BROKEN THE BUNK LOOSE IN HIS CELL AND WAS USING IT AS A BATTERING RAM. IT WAS ALSO DISCOVERED THAT THERE MIGHT BE A POSSABLE FIRE IN BRANIGH'S CELL. IN FACT BRANIGH HAD LIT TOILET PAPER ON FIRE PRIOR TO ENTRY TO THE CELL. DEPUTY HAWKES WAS THE SHIELD MAN FOLLOWED BY DEPUTY LEAVITT, AND SGT. MCGEE, MYSELF, AND DEPUTY DENTON AND MESSELT. LT. LUTES WAS THE DOOR MAN. DEPUTY MESSELT APPLIED THE TASER TO BRANIGH'S LEFT REAR LEG TELLING HIM TO COMPLY. BRANIGH WAS YELLING OBSENITY'S AS WELL AS DEATH THREATS THE WHOLE TIME THE EXTRACTION WAS GOING.

INMATE BRANIGH WAS SUBDUED AND SECURED. INMATE BRANIGH WAS MOVED INTO THE EAST CELL WITH ALL HIS LEAGAL WORK.

CPL. M. ROBERTS

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
3 Denton John	20:59:44 05/08/2008	

Nez Perce County Sheriff Supplemental Report

On 5/6/08 after arriving to work at the Jail I was informed by Sgt. McGee that we were going to move inmate Branigh to B-Block for Administrative segregation. At 1315 hrs. we moved inmate Branigh from the tank to B-block without incident. He was told by Sgt. McGee that he was in Ad. Seg., which did not go over very well. Inmate Branigh said "If that's the case, every time you open that door you better be suited up in body armour". About 20 minutes after the door was locked inmate Branigh started banging on the door and had broken the bunk away from the floor. It was at this point that smoke was detected from inmate Branigh's cell and it was decided that at cell extraction was needed. Sgt. McGee, Cpl. Roberts, Cpl. Felton, Dep. Leavett, Dep. Messelt and my self entered the cell. We pinned him to the bunk he began yelling obscenities, death threats and continued to resist. Deputy Messelt withdrew his taser for a contact stun to get him to comply. Inmate Branigh began to comply and was handcuffed and moved to east holding. END OF REPORT

05/09/2008
07:57

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 625804 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 16:31:26 05/05/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer: Clark Patricia
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

On todays date @ approximately 1615 hrs I was observing inmate Hieronymus use bleach to sanitize and clean the tank shower and in the wait for him to finish Branigh came up to the bars to talk to me and ask again about rec. Even though I was standing there with Deputy Bonds when the deputy had told Branigh about the measuring for construction on the present place where rec is done.

I again told Branigh that it was true what the deputy said since there planning to turn the rec yard into a secured sallyport. Branigh then asked why we need a new jail then, and I told him we'll still need to bring inmates over for court.

Branigh then made the comment/threat that if he isn't given rec then he will start some serious problems so at least he'll have something to do when we come in to taze him.

My personal opinion is this was more threat than joke, and should be taken very seriously by all the staff, as we have seen Branigh is quite capable of carrying this out.

Deputy Clark

05/09/2008
07:57

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 625693 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 23:44:22 05/04/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer: Gunter Jacob
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

On todays date around 11:25 I looked up at the camera in the tank and saw the inmates all gathered around the bars down near the broken window. I immediately took interest and observed inmate Branigh reaching through the bars with a lid and string trying to reach the glass. I immediately contacted Deputy Brown and Frost of the situation. We all met and went into the tank together. When we entered the catwalk I observed two sets of arms reaching through the bars. I observed Inmate Branigh, Inmate Paul, and Inmate Spencer walking away from the bars quickly when we entered the catwalk. We confiscated a few pieces of string and there was 2 hooks tyed to two pieces of string. We didn't find any glass within sight but there could be some in there. I would use caution going in there at this present time since the weapons could be in there. Seeing how the tank has shown absolutely no regard for authority the last few days standing on the tables and sitting on them when asked not to there may be something going on. A cell search may turn up more contraband. We will inform Sgt. McGee of the situation in the morning. In total there were three pieces of string. Two with hooks and one tyed to the bars.

Deputy Gunter #2565

05/09/2008
07:57

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 624201 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 14:15:50 04/22/2008 Treatment Date:
Type of event: IDP Inmate Disciplinary Problems
Quantity: 0.00
Officer: Smith Richard A
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

Today while handing out mail, subject yelled from cell, "Where does it say that in policy", regarding 5 pictures in cell? I stated, "I am not talking to you right now, since I was dealing with another inmate regarding this issue. Approximately five minutes later, subject rattled the bars demanding to speak to Sgt. McGee regarding "Sarcasm", Corporal Roberts advised Sgt. McGee was not in and he would be back shortly to speak to him. End of Report.
Smith 2572

05/09/2008
07:59

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 624203 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 14:41:52 04/22/2008 Treatment Date:
Type of event: IOI Inmate/Officer Interview
Quantity: 0.00
Officer: Smith Richard A
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

spoke to subject regarding his comments about me being sarcastic. I advised him that was not nor is it my intention. He stated he understood. I asked him if he wanted to speak to the corporal on shift or a grievance form. He stated, "no, I'm cool with this." End of report. I advised the Shift Corporals, Fenton and Roberts, as well as Lt. Lutes and Sgt. McGee. End of Report.
Deputy R. Smith 2572

05/09/2008
07:57

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 624118 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 15:46:37 04/21/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer: Smith Richard A
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

Today while conducting a cell check Inmate Leotis Branigh and Miguel Torres were complaining about the food portions today. Both stated, "Hey we heard pat tell the trustees to put the shit in the oven." i.e. reference the food.

I advised them that the trustees wear gloves while serving food. Both inmates then stated, "The portions today were skimpy." I advised them I would forward the concern to Sergeant McGee.

Leotis Branigh then stated, "You fuckers lied to us about the trustees handling the food." I then advised him that he was dealing directly with me and he should not be disrespectful to myself or the staff I worked with. He then said, "get the fuck out of here." I advised him not to talk to me like that and not to tell me what to do. Branigh then became physically destructive and kicked the garbage can, and yelled for me to get the fuck out of his face and get the fuck out of the cell.

At that time Sergeant McGee entered the tank and I informed him of the situation. He addressed Branigh's behavior with him. Branigh then entered his cell without further incident. Miguel Torres calmly explained to the Sergeant his concern regarding the amount of food they were being served and how they were hungry. Sergeant McGee advised Torres he would look into the matter. End of Report.

Deputy R.Smith 2572

05/09/2008
08:02

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 623223 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 23:37:18 04/11/2008 Treatment Date:
Type of event: MJN Miscellaneous Jail Notes
Quantity: 1.00
Officer: Richardson Gabe
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

Fri Apr 11 23:38:42 PDT 2008

While locking down the tank Inmate Branigh asked "Who did the laundry, it's not the Trustees is it cause I'm already mad at them for fucking up our food". I informed Inmate Branigh that trustees did the laundry under our supervision, and sometimes we (jail deputies) do the laundry. Branigh politely asked if the towels could be washed better stating that the smell bad when the get them, saying "they smell like rotten milk". He asked if they could be bleached or maybe not wash as much at a time. With the 4/2/08 riot in the tank, I thought this should be noted. I spoke with laundry officer Leavitt and we both felt that this is caused from the laundry sitting in the washers to long before being dried. Being the trustee officer I will speak with the trustees about drying laundry sooner. This may require more assistance from jail deputies in taking them over after dark, but could prevent another riot.

Gabe Richardson 2564

05/09/2008
07:56

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 622466 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 19:00:00 04/02/2008 Treatment Date:
Type of event: IDP Inmate Disiplinary Problems
Quantity: 0.00
Officer: Roberts Mike
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

TODAYS DATE 04-02-08 AT APPROX. 19:00 HRS DEPUTY M.WHITE NOTICED THAT THE GARBAGE CAN IN THE TANK HAD BEEN PLACED UP ON THE SHELF BY THE PHONE. DEPUTY WHITE ASKED THE TANK TO REMOVE THE CAN FROM THE SHELF. AT THIS POINT LEOTIS BRANIGH CAME RUNNING OUT OF HIS CELL HE GRABBED THE T.V. AND THREW IT ON THE GROUND AND THEN THREW THE REST OF THE T.V. AT THE PHONE YELLING PROFANITIES AS HE WENT.

DEPUTY WHITE AND MYSELF WENT TO THE TANK I ORDERED THE INMATES INTO THEIR CELLS. AT THIS POINT BRANIGH MADE THE STATEMENT WHAT DO YOU WANT TO KILL ME TO? THIS INCIDENT WAS IN RETALIATION TO THE TANK GETTING SHORTED ON THEIR MEALS. THE PORTION WAS SMALL DO TO THE FACT THAT THE TRUSTEE'S OVER LOOKED ANOUTHER PAN OF SHEPARDS PIE. THE TANK DID GET SMALLER PORTIONS THAN THE OTHER CELLS. THE TANK WAS LOCKED DOWN FOR THE REST OF THE EVENING. ALSO THE TANK RESIDENTS HAVE SEVERAL KEY PLAYERS THAT FEED OFF EACH OTHER IN THIS TYPE OF DISTRUCTIVE BEHAVIOR.

THE DISTRUCTIVE BEHAVIOR CONTINUED AFTER THE INMATES OF THE TANK WERE LOCKED DOWN. AFTER SPEAKING TO THEM AS A GROUP THE TANK AS A GROUP ASKED TO CLEAN UP THE MAHEIM THAT THEY CAUSED AFTER THE INITIAL INCIDENT WITH THE T.V.AND THE GARBAGE CAN. CLEANING SUPPLIES WERE PROVIDED AND THE CLEANING COMMENCED.

CPL.M.ROBERTS

05/09/2008
08:02

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 622470 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 20:34:12 04/02/2008 Treatment Date:
Type of event: MJN Miscellaneous Jail Notes
Quantity: 1.00
Officer: White Matthew
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

On todays date at approximately 1900 hrs visitation was just beginning and I was opening the tanks main cell door to escort two inmates to the visitation window when I noticed the tanks garbage can was up on the table. I returned back to the booking office after locking inmates to the visitation windows and staffed with corporal Roberts about this. Corporal Roberts told me to ask them politely to put it back down on the floor, I did this twice. At this point inmate Leotis came out of his cell and put back on the floor and then went over to the tv and yanked it from its plug in and threw it on the cell blocks floor. At this point Corporal Roberts and I gloved up and went to the tank to lock down the tanks inmates. When we opened the outside tank door Leotis approach us and was yelling aggressively about if we were going to beat him up and shoot him. Corporal Roberts responded "Leotis you know we would never do that" please cell up. Leotis spit out onto the cat-walk and finally went into his cell. Corporal Roberts and locked down the tank and then started to clean up the tanks cell block floor. Nothing follows at this time.

Deputy M.White 2595

05/09/2008
08:01

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 617745 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 04:59:40 02/22/2008 Treatment Date:
Type of event: MJN Miscellaneous Jail Notes
Quantity: 1.00
Officer: Leavitt Daniel
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

On Feb 22 while locking down the tank, inmate Branigh was standing close to the cell door while it was closing, I told Branigh "That would hurt if you got hung up in that door". Mr. Branigh said that he thinks it would be cool to put a sheet around anothers neck and attach it to the door so when we go to close it we will think it is stuck and keep yanking on the lever to close the door. That was all that was said and I exited the tank.

nothing follows

DANIEL LEAVITT 2570

05/09/2008
08:00

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 607461 Active
Name ID: 27654 No Contact Order+

-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
|-----+
-----+

Time/Date of Event: 09:25:48 11/02/2007 Treatment Date:
Type of event: MJN Miscellaneous Jail Notes
Quantity: 0.00
Officer: Felton Kelsey
Booking Number: 07-J3343
Description:
(See below)

=====

Description:

On 10-31-07 inmate Branigh turned in a grievance requesting double portion meals due to his over active thyroid disorder. Inmate Branigh stated he had spoke to the nurse who was of no help to him but did refer him to the doctor. Deputy Nall faxed the nurses paperwork to Dr. Jefferson for review, Dr. Jefferson said 2500 calories should be enough and we could monitor inmate Branigh's weight. I spoke with Dr. Peterson's nurse at vally medical, she then pulled inmate Branigh's file for Dr. Peterson to review. Dr. Peterson then sent a order to the lab for inmate Branigh to get blood work done to be tested for his thyroid condition. Deputy Hawkes and myself then transported inmate Branigh to vally medical center for a blood draw. At 1436 hrs. on 11-01-07 I recieved a fax from Dr. Peterson's nurse with the results of inmate Branigh's blood work. Dr. Peterson said the results were normal, should have a normal diet, unless significant weight loss occurs. LT. Lutes answered inmate Branigh's grievance saying the results show normal with no indication of thyroid problems. LT. Lutes gave the grievance back to inmate Branigh, Branigh said that is a good thing but IDOC said he had thyroid problems. Nothing follows at this time.

Cpl. Kelsey Felton #2568

05/09/2008
08:00

Nez Perce County Sheriff
Jail Log:

487
Page: 1

Event Number: 606503 Active
Name ID: 27654 No Contact Order+

+-----+
| Last: BRANIGH III First: LEOTIS Mid: BRANN |
| Addr: [REDACTED] st Phone: [REDACTED] |
| City: Clarkston ST: WA Zip: 99403 DOB: [REDACTED] SSN: [REDACTED] |
+-----+

Time/Date of Event: 14:44:12 10/22/2007 Treatment Date:
Type of event: MJN Miscellaneous Jail Notes
Quantity: 1.00
Officer: Leavitt Daniel
Booking Number: 07-J3343
Description:
(See below)

= = = = =

Description:

TODAY WHILE AT OUTDOOR REC. MR. BRANIGH WAS REALLY OBSERVANT. HE WAS WALKING AROUND AND LOOKING AT THE CRACKING PAINT ON THE WALLS, THE SPIDER WEBS, AND THERE WAS A FEW DADDY LONG LEG SPIDERS ON THE WALL. AT ONE POINT DEPUTY IRBY ASKED HIM IF HE KNEW WHAT THE MOST DEADLY SPIDER WAS AND HE SAID THE DADDY LONG LEG BUT THEY CANT BITE. BUT YOU CAN MILK THE VENOM OUT OF THEM AND USE IT FOR A WEAPON. A FEW MINUTES LATER THE BALL CAME TO THE FENCE AND HE SAID "I BET I CAN FIT THROUGH THAT OPENING IF I GOT A GOOD RUN AT IT." I THEN TOLD HIM THAT I BET IT WOULD HURT IF YOU MADE IT OVER. A FEW MINUTES LATER I HEARD HIM TALKING TO ONE OF THE OTHER INMATES, RYAN JONES, AND SAID THAT IF HE KNEW HE WAS BEING CHARGED WITH HOMICIDE THAT HE WOULD HAVE KEPT HIS HANDCUFF KEYS. IT LOOKED TO ME AS HE AND RYAN JONES WERE PRETTY GOOD FRIENDS TOO, LOTS OF TALK BETWEEN THEM. BRANIGH AND MR. JONES WERE WALKING AROUND AND DOING A LOT OF WHISPERING AND CHECKING OUT THE SURROUNDINGS.

NOTHING FOLLOWS AT THIS TIME.

DEPUTY LEAVITT 2570

05/09/2008
08:03

Nez Perce County Sheriff
LAW Incident Table:

487
Page: 1

Incident Number: 08-N616

Nature: Weapon Offense Case Number:

Image:

Addr= 1230 MAIN ST

Area: D2B

E OF 8TH, W OF

City: Lewiston

ST: ID Zip: 83501

Contact: 60

+-- Complainant& 211 -----+
| Lst: NEZ PERCE COUNTY SHERIFF Fst: Mid: |
| DOB: / / SSN: - - Adr= 1221 F Street |
| Rac: Sx: Tel: (208)799-3131 Cty: Lewiston ST: ID Zip: 83501 |
+-----+

Offense Codes: WOFF

Reported: WOFF Observed: WOFF

Circumstances:

Rspndg Officers: Messelt Kevin Santos Patrick

Rspnsbl Officer: Messelt Kevin Agency: NPCS CAD Call ID: 0802-0088

Received By: Blackham Erin

Last RadLog: 14:26:09 02/04/2008 CMPLT

How Received: O Officer Report

Clearance: RPT Written Incident Repo

When Reported: 14:23:30 02/04/2008

Disposition: TRA Disp Date: 02/04/2008

Occurrd between: 14:23:30 02/04/2008

Judicial Sts:

and: 14:23:30 02/04/2008

Misc Entry:

MO:

Narrative: (See below)

Supplement: (See below)

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	211	02/04/2008	NEZ PERCE COUNTY SHERIFF,	*Complainant
NM	27654	02/04/2008	BRANIGH, LEOTIS BRANNON III	OFFENDER
CA	0802-0088	02/04/2008	14:23 02/04/2008 Weapon Offens	*Initiating Call
PR	118603	02/05/2008	SIL Weapon \$0	Evidence
PR	118604	02/05/2008	Compact Disc Staples \$0	Evidence
EV	24389	02/11/2008		*Evidence Incident

LAW Incident Offenses Detail:

Offense Codes

Seq	Code	Amount
1	WOFF Weapons Offense	0.00

LAW Incident Responders Detail

Responding Officers

Seq	Name	Unit
1	Messelt Kevin	33
2	Santos Patrick	13

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
14:26:09 02/04/2008	1	13	CMPLT	NPCS3	NPCS	incid#=08-N616 Completed call

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
14:26:09 02/04/2008	1	33	CMPLT	NPCS3	NPCS	incid#=08-N616 Completed call
14:25:50 02/04/2008	1	33	23	NPCS3	NPCS	incid#=08-N616 Arrived at Scen
14:25:04 02/04/2008	1	33	CMPLT	NPCS3	NPCS	incid#=08-N616 Reassigned to c
14:24:55 02/04/2008	1	13	ARRVD	NPCS3	NPCS	incid#=08-N616 On-site call=63
14:24:55 02/04/2008	1	33	ARRVD	NPCS3	NPCS	incid#=08-N616 On-site call=63

Narrative:

Nez Perce County Sheriff's Department

Date and Time: 02/04/2008 1430 hours

Report Type: Weapons Offense

Reporting Officer: Deputy K. Messelt #2533

On the above date I responded to the jail in reference to a report of a weapon found in the property of an inmate. Jail staff briefed me that during a routine contraband inspection of the jail, a weapon was located inside the mattress of Leotis Branigh, DOB: [REDACTED]. The weapon, commonly referred to as a 'Shank', is approximately 8 inches long, 2 inches wide, and is a piece of galvanized steel. One end of the item has been torn into a point, and has been sharpened at the tip.

According to Corrections Deputy Matthew White, he found the shank while searching a mattress in the cell assigned to Branigh. The cell is known as Tank Cell #4. Deputy White stated that as he was shaking the mattress the weapon fell out of the inside of the mattress and fell onto the floor. Deputy White and Corrections Sgt McGee stated that the cell has only been occupied by Branigh.

I then made contact with Branigh with Cpl Santos. Branigh, who is awaiting trial for murder, was advised of the nature of this incident, read his Miranda Rights, which he waived, and agreed to answer questions regarding this incident. (See audio recording of interview with Branigh).

During the course of my interview Branigh stated first that it was possible that he was aware of the shank, since as he stated, "I am a pack rat, I keep everything I find". But later denied having any knowledge of the weapon. When asked if he has any enemies, or has had any confrontations with other inmates, Branigh stated he has not, and that he does not feel threatened by anyone in the jail. He also stated that he does not think that any of the inmates would intentionally hide the weapon in his mattress in an attempt to "set him up". Branigh again denied having any knowledge of the weapon, or how it may have been placed inside of his mattress.

The weapon was secured and will be entered into evidence, as will the audio recording of this interview. (see Corrections Deputy White's report). This report will be forwarded to the Nez Perce County Prosecutor's Office for review and filing of charges.

Kevin Messelt #2533
Investigator

Law Supplemental Narrative:

Seq	Name	Date	Supplemental Narratives	Narrative
1	White Matthew	14:45:12	02/04/2008	

Nez Perce County Sheriff Supplemental Report

Supplemental Report dated 02/04/08

After arriving at Nez Perce County jail, Sgt.McGee said we would be doing a cell search at 1300 hrs. The reason for the search was to locate wire that was being unwrapped and taken off the brooms and mops. While I was going through the belongings in the tank cell #4 I grabbed and shook the green sleeping mattress. During the shakeing process a metal knife-shaped object fell from within the green sleeping mattress and onto the floor. Deputy Hawkes saw this and said not to pick it up until Sgt.Mcgee was notified. Cell #4 in the tank is assigned to Leotis Branigh. Written material within the cell is addressed to Leotis Branigh as well as from Leotis Branigh.

Deputy MWhite #2595

05/09/2008
08:03

Nez Perce County Sheriff
LAW Incident Table:

487
Page: 1

Incident Number: 08-N1741

Nature: Property Damage Case Number:

Image:

Addr= 1230 MAIN ST

Area: D2B

E OF 8TH, W OF

City: Lewiston

ST: ID Zip: 83501

Contact:

+-- Complainant& 211 -----+
| Lst: NEZ PERCE COUNTY SHERIFF Fst: Mid: |
| DOB: / / SSN: - - Adr= 1221 F Street |
| Rac: Sx: Tel: (208)799-3131 Cty: Lewiston ST: ID Zip: 83501 |
+-----+

Offense Codes: VAND

Reported: TCPD Observed: VAND

Circumstances:

Rspndg Officers: Messelt Kevin Thomas Joe A Egbert Gregory
Rspnsbl Officer: Messelt Kevin Agency: NPCS CAD Call ID: 0804-0068
Received By: Reagan Kerry Last RadLog: 10:11:22 04/03/2008 CMPLT
How Received: O Officer Report Clearance: RPT Written Incident Repo
When Reported: 09:15:24 04/03/2008 Disposition: INA Disp Date: 04/03/2008
Occurrd between: 09:15:24 04/03/2008 Judicial Sts:
and: 09:15:24 04/03/2008 Misc Entry: NIBRS

MO:

Narrative: (See below)

Supplement: (See below)

= = = = =

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	81	04/03/2008	ROBERTS, MICHAEL JAMES	Witness
NM	211	04/03/2008	NEZ PERCE COUNTY SHERIFF,	*Complainant
NM	211	04/03/2008	NEZ PERCE COUNTY SHERIFF,	Victim
NM	5085	04/03/2008	WHITE, MATTHEW JAMES	Witness
NM	27654	04/03/2008	BRANIGH, LEOTIS BRANNON III	Suspect
NM	42012	04/03/2008	PAUL, TYRONE ADRIAN	Involved
NM	82165	04/03/2008	MCGEE, JACK CLINT 3RD	Contacted
NM	96747	04/03/2008	KRAMER, GREGORY ORLYN	Involved
CA	0804-0068	04/03/2008	09:15 04/03/2008 Property Dama	*Initiating Call
PR	119543	04/07/2008	Compact Disc staples Video \$0	Evidence
PR	119544	04/07/2008	Compact Disc Staples Audio \$0	Evidence
PR	119655	04/03/2008	Television \$85	Damaged
EV	25283	04/30/2008		*Evidence Incident
EV	25284	04/30/2008		*Evidence Incident

LAW Incident Offenses Detail:

Offense Codes

Seq Code	Amount
1 VAND Destruct/Damage/Vandalize Prop	0.00

LAW Incident Responders Detail
Responding Officers

Seq	Name	Unit
1	Messelt Kevin	33
2	Thomas Joe A	26
3	Egbert Gregory	34

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
10:11:22 04/03/2008	1	26	CMPLT	NPCS3	NPCS	incid#=08-N1741 Completed call
10:11:22 04/03/2008	1	33	CMPLT	NPCS3	NPCS	incid#=08-N1741 Completed call
10:02:45 04/03/2008	1	34	CMPLT	NPCS3	NPCS	incid#=08-N1741 Reassigned to
09:15:55 04/03/2008	1	26	ARRVD	NPCS3	NPCS	incid#=08-N1741 On-site call=2
09:15:55 04/03/2008	1	33	ARRVD	NPCS3	NPCS	incid#=08-N1741 On-site call=2
09:15:55 04/03/2008	1	34	ARRVD	NPCS3	NPCS	incid#=08-N1741 On-site call=2

Narrative:

Nez Perce County Sheriff's Department

Date and Time: 04/03/2008 0800 hours

Report Type: Property Damage, Attempt to Escape, Inciting a Riot

Reporting Officer: Deputy K. Messelt #2533

On the above date I was briefed on an incident which occurred in the jail on 04/02/2008 at approximately 1730 hours. During this incident I was told by Sgt Hildebrand that there had been a disturbance in the jail, and that Leotis Branigh had destroyed a television set, and broken a window. I was also advised that there was a brief riot in the cell block which may have been organized and planned by Branigh.

I Watched the video which was provided by Sgt McGee. In the video I observed several inmates as well as one I identified as Leotis Branigh in the common area of the cell area known as the Tank. While in this area I could see Branigh begin to kick, and then later throw a trash can, spilling the contents onto the floor. Later in the video I observed Branigh talking with other inmates, and occasionally enter his cell. At one point in the video I observed that all of the inmates had entered Branigh's cell. After a few moments I could see Branigh exit his cell, pick up the Television which was on a counter in the common area, and throw it to the ground. I then watched as Branigh picked up the Television again and threw it to the ground. After this occurred I could see the other inmates exit Branigh's cell and begin to gather their belongings.

What I could not see on the video was the destruction of the window. Sgt McGee stated the video cameras are not positioned to monitor the 'Catwalk' which runs parallel to the Tank area. I then contacted Tyrone Paul who is an Inmate, and was being held in the Tank area. Paul stated he did not see or hear anything. I then contacted Greg Kramer, who is also an Inmate in the Tank. Kramer stated he did not see anything, just that he was woken by the sound of breaking glass and yelling. (It should be noted that while I watched the video of this incident I observed Paul and Kramer walking about, and talking with Branigh.

I then conducted an interview with Leotis Branigh, which was audio recorded. I explained to Leotis why I was there and that he was a suspect. I then read Branigh his rights per Miranda, which he waived stating he would make a statement and answer questions about this incident.

During the interview Branigh admitted to breaking the Television because he was upset about the small portions of food served during the evening meal. Branigh stated he was also upset about information he had received regarding an unrelated case he is awaiting trial for. Branigh stated he broke the window, however this was accidental. Branigh stated he was attempting to open the window to allow air to circulate through the Tank

area due to a foul odor. Branigh went on to say the window was secured shut with a screw, but when he pulled on the window the screw nearly came out of the frame where it was secured. Branigh stated that as he was pulling the window open the glass suddenly shattered. When asked if this window has ever been opened since he has been incarcerated, Branigh stated "no", but the stink was so bad, and there is no other air circulation in the building". Branigh went on to say that the window was originally designed to open, but since the mechanisms which allow it to be open and held in place areq broken. Jail staff later confirmed that the window was secure shut with screws since the attaching hardware is broken.

I went to the area where of the broken window and observed that the frame where the window had been is now sealed with cardboard and duct tape. I did however see broken remnants of glass in the frame. I also noticed that the window had been a double pane type window, and that both inner and outer panes of glass have been broken out. I also noticed that on the outside of the window there is steel mesh covering the window opening. However the window just to the right of the broken window does not have steel mesh covering, and is open to the outside. Sgt McGee stated that jail staff have been conducting a search of all inmate housing areas, and that several shards of glass and other items which could be used as weapons, have been located. I secured the video disk as evidence and will have the audio portion of my interview with Branigh placed into evidence as well.

This report will be forwarded to the prosecutor's office for review and filing of charges.

Kevin Messelt #2533
Investigator

Law Supplemental Narrative:

Seq	Name	Date	Supplemental Narratives Narrative
1	Messelt Kevin	14:48:48 04/07/2008	

NEZ PERCE COUNTY SHERIFF'S DEPARTMENT CAP SHEET
AND CASE DISPOSITION SHEET

DATE:

IN CUSTODY:[XX] YES
[] NO

=====

DEFENDANT:

Name: Leotis Brann Branigh III
Address: 1230 Main Street
Telephone: (208) 799-3132
Date of Birth: [REDACTED]
Social Security Number: [REDACTED]

=====

NEZ PERCE COUNTY SHERIFF'S DEPARTMENT CASE NUMBER: 08-N1741
OTHER AGENCIES RELATED CASE NUMBERS:
DATE OF INCIDENT: 04/02/2008
TIME OF INCIDENT: 1930 hours

=====

CHARGES:

1. Injuring Jails 18-7018 (Felony)
2. Malicious Injury to Property 18-7001 (1) (Misdemeanor)
- 3.

=====

WITNESSES:

1. Sgt Jack McGee
2. Cpl Mike Roberts
3. Deputy Matthew White
- 4.
- 5.
- 6.
- 7.

=====

CO-DEFENDANTS:

- 1.
- 2.
- 3.
- 4.

=====

EVIDENCE:

1. Video disc
2. Audio interview disc
3. Statements of Deputy White and Cpl Roberts
- 4.
- 5.
- 6.
- 7.

=====

SUMMARY (PROBABLE CAUSE): On 04/02/2008 at approximately 1930 hours a disturbance occurred in the jail area known to as 'The Tank'. As a result of this disturbance one television set belonging to the Nez Perce County Jail was destroyed, and a window in the same area was also destroyed. Video surveillance shows that an incarcerated inmate Leotis B Branigh, committed the act of damaging the television. In an interview Leotis Branigh stated he destroyed the TV out of anger over the portions served during the evening meal, and information he received regarding a case in which he is awaiting trial. Branigh also stated he broke the window while attempting to open it. Branigh stated this was accidental, and was attempting to open the window to allow air in the area to circulate. Branigh did state that the window was secured in the closed position by screws, but pulled the screws out of the wall while attempting to open the window.

=====

RECOMMENDATION: ☐ WARRANT
☒ SUMMONS

=====

OFFICERS/INVESTIGATORS:

1. Deputy K. Messelt
- 2.
- 3.

=====

PROSECUTOR to POLICE:

DATE:

- ☐ Charges filed
- ☐ Warrant
- ☐ Referred to Juvenile Services
- ☐ Prosecution delayed for further investigation
- ☐ Prosecution Declined
- ☐ Summons

Assigned Prosecutor:

=====

FURTHER INVESTIGATION REQUESTED:

- 1.
- 2.
- 3.

Police Follow-up due by:

=====

PROSECUTION DECLINED: (EXPLANATION)

=====

CASE DISPOSITION:

- ☐ Guilty plea as charged
- ☐ Guilty plea to other charge:
- ☐ Guilty verdict
- ☐ Not Guilty verdict
- ☐ Other:

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I.S.B. # 4700
ckovis@turbonet.com

Attorney for Defendant

FILED
2008 JUN 4 PM 4 11
PATTY D. WEEKS
CLERK OF THE DIST. COURT
DEPUTY
Patty Weeks

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,	)	CASE NO. CR-07-8107
)	
Plaintiff,	)	WAIVER OF SPEEDY TRIAL
)	
vs.)	
)	
LEOTIS B. BRANIGH III,)	
)	
Defendant.)	
)	

Leotis B. Branigh III, after being advised of his constitutional and statutory speedy trial rights, hereby waives his right to a speedy trial.

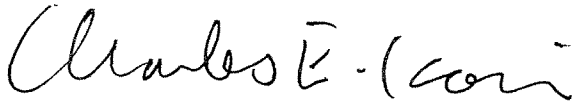
DATED this 4th day of June, 2008.

Leotis B. Branigh III
LEOTIS B. BRANIGH III

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June,
2008, a true and correct copy of this *Waiver of Speedy
Trial* was hand-delivered via courthouse basket to:

DANIEL SPICKLER
PROSECUTING ATTORNEY
NEZ PERCE COUNTY COURTHOUSE
LEWISTON, IDAHO 83501



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Attorney for Defendant

FILED
2008 OCT 20 PM 3 59
PATRICIA KEENE
CLERK OF THE DISTRICT COURT
DEPUTY
Patricia Keene

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	CASE NO. CR-07-8107
)	
Plaintiff,	)	MEMORANDUM IN SUPPORT
	)	OF FIRST MOTION IN LIMINE
vs.)	
)	
LEOTIS B. BRANIGH III,)	
)	
Defendant.)	
)	

1. FACTS

On October 3, 2007 Detective Hopple of the Lewiston Police Department talks with a representative of Sprint about obtaining cell phone records of Mr. Branigh. (Bate stamp #'s 75-76; See an attached affidavit of Charles E. Kovis with attached documents) In these documents Detective Hopple is told by Sprint he must produce a warrant to obtain the records. Detective Hopple requests that Sprint freeze all records and shut off the cell phone service. This is done. Detective Hopple then faxes a preservation letter to Sprint after he's had the service shut off. (Bates stamp #'s 176-177)

MEMORANDUM IN SUPPORT
OF FIRST MOTION IN LIMINE

1195
ORIGINAL

On October 4, 2007, Detective Hopple talks to Sprint again. (Bates stamp #'s 85) He finds out that the preservation letter did not go through and he faxes it again. Detective Hopple then obtains a Search Warrant for records from **Sprint Nextel Corporate Security, Subpoena Compliance, located at 6480 Sprint Parkway in Overland Park, Texas (Fax # 913-315-0736)** (Bates stamp #'s 179-186) Detective Hopple faxes the search warrant to Sprint (Bates stamp # 178)

On October 10, 2007, Detective Hopple talks to Sprint once again. (Bates stamp # 110) At this time, Sprint indicates they have received a faxed copy of a "preservation letter" and a search warrant, and that the phone service is frozen.

On October 31, 2007, Detective Hopple receives records from Sprint via fax. (Bates stamp #317) These records include text message records and call logs. (Bates Stamp # 318-416) These records are from **Overland Park, Kansas.**

On November 29, 2007, Detective Hopple talks to Sprint once more. (Bates Stamp # 499) He speaks with Ricardo Leal to request a certification/authentication letter for the text records and the subscriber information for the telephone number. Ricardo Leal explained that the search warrant had to specifically request those two items be included and requested. He explained that another search warrant would have to be served.

Detective Hopple presumably obtains a search warrant for records from **Sprint Nextel Corporate Security, Subpoena Compliance, located at 6480 Sprint Parkway in Overland Park, Texas (Fax 913-315-0736)** (Bates stamp #'s 446-452)

At approximately 1317 hours, Detective Hopple faxes the Search Warrant to Sprint (Bates stamp #'s 441, 443, 444) At some point (2:56 p.m. ?) Sprint faxes telephone records to Detective Hopple (Bates stamp #'s 453-498) from **Overland Park, Kansas.**

At 3:49 p.m., after the search warrant had been served and records obtained, the *Order*, (Bates stamp #442), the *Return* (Bates stamp #'s 443-444), the *Acknowledgment* (Bates stamp #445), and the *Affidavit* (Bates stamp #'s 445-450) are filed with the Court.

At 3:50 p.m., the *Search Warrant* is filed with the Court. (Bates stamp #'s 451-452).

II. ARGUMENT

The Fourth Amendment to the United States Constitution, and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. *State v. Fancher*, 145 Idaho 832, 840, 186 P.3d 688 (Ct. App.2008) (cites omitted) Specifically, a person has the right to “be secure in their persons, houses, papers, and effects.” Fourth Amendment; Idaho Const. art. I, § 17. *Id. at 840*.

Application of the constitutional safeguards from unreasonable search and seizure depends on whether the person invoking protection had a justifiable, reasonable, or legitimate expectation of privacy which was invaded by some governmental action. *Id. at 840* citing to (*Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 2580-81, 61 L.Ed.2d 220, 226-27 (1979); *Spencer*, 139 Idaho at 738, 85 P.3d at 1137. As such, a Fourth Amendment analysis involves a determination of whether the defendant has an actual, subjective expectation of privacy and, if so, whether the defendant's expectation of privacy, when viewed objectively, was reasonable under the circumstances. *Id. at 840* citing to *State v. Wilkins*, 125 Idaho 215, 222, 868 P.2d 1231, 1238 (1994); *Spencer*, 139 Idaho at 738, 85 P.3d at 1137. An expectation of privacy is objectively reasonable when it is legitimate, justifiable, and one society should both recognize and protect. *Id. at 840* citing to *Spencer*, 139 Idaho at 738, 85 P.3d at 1137; *State v. Johnson*, 126 Idaho 859, 862, 893 P.2d 806, 809 (Ct.App.1995). The burden is on the defendant to prove the existence of a

legitimate expectation of privacy. *Id.* at 840 citing to *Spencer*, 139 Idaho at 739, 85 P.3d at 1138; *State v. Dreier*, 139 Idaho 246, 251, 76 P.3d 990, 995 (Ct.App.2003).

Mr. Branigh has both a subjective and an objective expectation of privacy in his dealing with Sprint Nextel. As a subscriber, he can reasonably rely upon Sprint Nextel's Privacy Policy which has been produced and attached to the *Affidavit of Charles E. Kavis in Support of First Motion in Limine*. This privacy policy would lead any subscriber to believe that he or she can reasonably believe that his or her telephone records are private under the circumstances described in the policy. Any Sprint Nextel subscriber, including Mr. Branigh, has a subjective expectation of privacy based upon the privacy policy which applies to Sprint's plans.

Mr. Branigh also has an objective expectation of privacy in his telephone records kept by Sprint Nextel. Much of the Sprint Nextel Privacy Policy language mirrors that found and codified at 47 U.S.C. §222.

47 U.S.C. § 222 states in pertinent parts:

Title 47 - Telegraphs, Telephone, and Radiotelegraphs
CHAPTER 5 - WIRE OR RADIO COMMUNICATION
Subchapter II - Common Carriers
Part I Common Carrier Regulation

Sec. 222. Privacy of customer information:

(a) In general

Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

....

(h) Customer proprietary network information

The term “customer proprietary network information” means configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship . . .

The privacy policy includes a section discussing *Customer Proprietary Network Information* and special rules related to access of that information. It also discusses *Disclosure of Personal Information* wherein the policy states: “We disclose personal information when we believe release is appropriate to comply with the law (e.g., legal process, E911 information) . . .” Mr. Branigh can rely upon his records being private and undisclosed until Sprint Nextel complies with “**legal process.**”

As stated above in *Fancher*, “(A)n expectation of privacy is objectively reasonable when it is legitimate, justifiable, and one society should both recognize and protect.” *Fancher at 840*. Here, because the expectation of privacy has been codified, the legislature has made that expectation legitimate, justifiable and one that has been both recognized and protected. Mr. Branigh has proven the existence of a legitimate expectation of privacy, both subjectively and objectively.

Next, the Court must determine if Mr. Branigh’s legitimate expectation of privacy was invaded by some governmental action.

As stated above in *Fancher*, the Fourth Amendment to the United States Constitution, and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. Specifically, a person has the right to “be secure in their persons, houses, papers, and effects. The actions by Detective Hopple amounted to an unreasonable seizure and subsequent search not only once but at least twice.

On October 4, 2007, Detective Hopple obtained an Idaho search warrant to obtain records

from: **Sprint Nextel Corporate Security, Subpoena Compliance located at 6480 Sprint Parkway in Overland Park, Texas (Fax 913-315-0731)** (Bates stamp #'s 179-186) An Idaho search warrant is only valid in Idaho. It is not valid in any other state. I.C. § 67-2337 states:

67-2337. Extraterritorial authority of peace officers.

....

(2) All authority that applies to peace officers when performing their assigned functions and duties within the territorial limits of the respective city or political subdivisions, where they are employed, shall apply to them outside such territorial limits to the same degree and extent only when any one (1) of the following conditions exist:

- (a) A request for law enforcement assistance is made by a law enforcement agency of said jurisdiction.
- (b) The peace officer possesses probable cause to believe a crime is occurring involving a felony or an immediate threat of serious bodily injury or death to any person.
- (c) When a peace officer is in fresh pursuit as defined in and pursuant to chapter 7, title 19, Idaho Code.

Detective Hopple acted outside his territorial jurisdiction. He did not have any extraterritorial authority pursuant to any exception found in I.C. § 67-2337 when he requested the search warrant. Therefore, Detective Hopple conducted an illegal seizure and search. Pursuant to the exclusionary rule, evidence obtained as a result of an illegal search is inadmissible in the criminal trial of a

defendant. *Fancher* at 843.

Article I, Section 17 of the Idaho Constitution mandates that no warrants shall issue “without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.” The 4th Amendment to the United States Constitution states that “. . . no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The search warrant affidavit states that the records are in Overland Park, Texas. The records came from Overland Park, Kansas. The search warrant was served in the wrong state. Not the wrong house. Not the wrong apartment building. The wrong state. Pursuant to the exclusionary rule, evidence obtained as a result of an illegal search is inadmissible in the criminal trial of a defendant. *Fancher* at 843.

Again, on November 29, 2007, Detective Hopple obtains another Idaho search warrant to obtain a certification/authentication letter for the previously obtained records and also to obtain subscriber information from **Sprint Nextel Corporate Security, Subpoena Compliance located at 6480 Sprint Parkway in Overland Park, Texas (Fax 913-315-0731)** (Bates stamp #'s 446-452) The same arguments for the original search warrant apply here. The Idaho search warrant is extraterritorial and not valid outside the State of Idaho. The Idaho search warrant for Overland Park, Texas is invalid. It isn't a valid search warrant in Kansas either because it was, again, extraterritorial and it was served prior to being filed with the Court. (Bates stamp #'s 441,443-444 & 442-452)

Further, any records, documents or evidence seized pursuant to this warrant are the fruits of an illegal seizure pursuant to an invalid and illegal service of the first invalid Idaho search warrant. Case law mandates that this evidence be suppressed. The Court of Appeals in *Fancher* at 843 states

that "(T)his includes not only evidence uncovered as a direct result of the illegal search, but also any evidence later discovered that is a "fruit of the poisonous tree" citing to *Segura v. United States*, 468 U.S. 796, 804, 104 S.Ct.

Also, I.C.R. 41 (e) states that if a person is aggrieved by a search and seizure, the remedy is to restore the property and not admit the evidence at any hearing or trial. Mr. Branigh requests that his telephone records be given back to him. He further requests that the telephone records not be admitted at trial.

III. CONCLUSION

Mr. Branigh has a legitimate, justified and reasonable expectation of privacy in his telephone records as expressed by 47 U.S.C. § 222 and the Sprint Nextel Privacy Policy. His reasonable expectation of privacy in his records was invaded by not only one invalid Idaho search warrant, but by a second invalid Idaho search warrant issued a month later. Both of these warrants were extraterritorial. Both of these warrants were served in the wrong state. All evidence obtained from these illegal warrants should be suppressed pursuant to the exclusionary rule and fruit of the poisonous tree. All evidence obtained from these illegal warrants should be returned to him and not used against him at trial pursuant to Idaho Criminal Rule 41 (e).

DATED this 17th day of October 2008.



Charles E. Kovis
Attorney for Defendant Leotis B. Branigh III

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October,
2008, a true and correct copy of this *Memorandum*
in Support of First Motion in Limine was hand-delivered to:

DANIEL SPICKLER
PROSECUTING ATTORNEY
P.O. BOX 1267
LEWISTON, IDAHO 83501



Charles E. Kovis

8 Leotis B. Branigh III
P.O. Box 896
Nez Perce County Jail
Lewiston, ID 83501
Defendant Pro Se

FILED

2009 FEB 20 PM 4 26

PATTY C. WEEKS
CLERK OF THE DIST. COURT
Patty C. Weeks
DEPUTY

In The District Court Of The Second Judicial District Of The
State Of Idaho, In And For The County Of Nez Perce.

State Of Idaho,
Plaintiff,

vs.

Leotis B. Branigh III
Defendant

Case No. CR2007-8107

Defendant's Affidavit

In Support Of

Motion For Reconsideration

Affidavit

State Of Idaho)
County Of Nez Perce) ss.

I, Leotis B. Branigh III, Defendant, Pro Se in the above-
entitled matter, after being first duly sworn on oath,
declare as follows:

1. Affiant is the defendant in this case.
2. Affiant is currently representing himself Pro Se, with
the assistance of Advisory Counsel Charles Kovis.

Aff. in support of motion for reconsideration
1

1204

3. Affiant makes this Affidavit in Support of Defendant's Motion for Reconsideration.

4. Affiant has been advised by Attorney Charles Kovis' secretary, that Mr. Kovis is on vacation for the entire week of February 16, 2009 and therefor affiant is unable to confer with Advisory Counsel at present to prepare, research, and file the memorandum in support of the Defendant's Motion for Reconsideration.

5. Affiant made an Affidavit that was submitted to the Court on October 16, 2008, regarding concerns that Defendant had about Defense preparations not being thoroughly and effectively made by Defense Counsel, and as a formal notice to the Court in this case.

6. Affiant hereby incorporates by reference, all facts set forth in the October 16, 2008 Affidavit of Defendant, and said Affidavit is attached as Exhibit "A" to this Affidavit with all facts incorporated in support of Defendant's Motion for Reconsideration.

7. It is the position of this Affiant that Defense preparations were not thoroughly and effectively made by Defense Counsel prior to Jury Trial and that this Affiant/Defendant was forced to proceed with a Jury Trial by the Court, who this Affiant believes, told

Affiant, that the Jury Trial was going to proceed regardless of the issues Affiant had with Defense Counsel regarding Defense Strategies and preparations.

8. At the time of the Jury Trial, Affiant did not feel that Defense preparations were thoroughly made and did not agree with any Defense strategy by Defense Counsel that involved proceeding without those preparations being made.

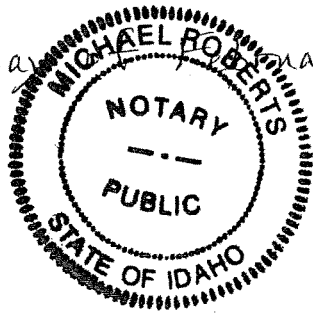
9. The Court forced this Affiant to proceed without the Defense being properly prepared for a Jury Trial.

Further Your Affiant Sayeth Naught.

Dated This 20th Day of February, 2009.

Leotis B. Branigh III
Leotis B. Branigh III
Defendant Pro Se

Subscribed and Sworn to before me,
a Notary Public of Idaho,
this 20th day of February, 2009.



Michael Roberts
Notary Public Of Idaho
Residing at: Lewiston, ID
My Commission Expires: 030720

Aff. in support of motion for reconsideration.

Certificate Of Service

I Hereby Certify, that on the 20th day of February, 2009, I delivered to Nez Perce County Jail staff for delivery via Court basket a true and correct copy of Defendant's Motion For Reconsideration and Defendant's Affidavit In Support Of Motion For Reconsideration, to the following:

Clerk Of The District Court
Nez Perce County Courthouse
P.O. Box 896
Lewiston, ID 83501

Daniel L. Spickler
Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501

Leotis B. Branigh III
Leotis B. Branigh III
Defendant Pro Se

Leotis Brannon Branigh III
P.O. Box 896 Nez Perce County, Trail
Lewiston, ID 83501
Defendant

In The District Court Of The Second Judicial District Of
The State Of Idaho, In And For The County Of Nez Perce.

State Of Idaho
Plaintiff

Case No. CR2007-0008107
Affidavit Of Defendant

v.

Leotis B. Branigh III
Defendant

Affidavit

State Of Idaho)
County Of Nez Perce) ss.

I, Leotis Brannon Branigh III, the defendant in the above
entitled matter, after being first duly sworn on oath,
declare as follows:

1. Affiant is the defendant in this case.

2. Affiant does not have access at present, to materials
or equipment to meet the filing requirements of Idaho
Criminal Rule 12 (c), and therefore requests this Honorable
Court Waive the requirement.

AFFIDAVIT IN SUPPORT OF MOTION FOR RECONSIDERATION

1208

✓ 1.1.4 "A"

3. Affiant makes this affidavit as a formal notice to the Court in this case.

4. Affiant is not comfortable, at present, with Defense preparations, relative to the current Trial Schedule in this case, nor does affiant intend to go to Jury Trial until Defense preparations have been thoroughly and effectively made.

5. Affiant does not intend this affidavit to be a Waiver of Attorney/Client Privilege, nor does this affiant waive said Privilege.

6. Affiant has attempted to have multiple Defense Motions filed by and through Defense Counsel, since June, 2008, yet only the Motion to have this affiant Psychologically evaluated and a Motion to Vacate a previous Trial Schedule, have been filed.

7. Affiant has requested multiple motions be prepared and filed with the Court upon this affiant's review and approval of them for filing, yet none of these motions has yet been seen by this affiant.

8. Affiant has no intention of being held to answer before a Jury until the majority of the motions are prepared to affiant's satisfaction, filed, and ruled on by this Honorable Court and any other Court that has Jurisdiction.

AFFIDAVIT IN SUPPORT OF MOTION FOR RECONSIDERATION

1209

Exhibit "A"

9. Affiant feels that he is being forced to go to Trial without affiant's Defense being litigated thoroughly and effectively.

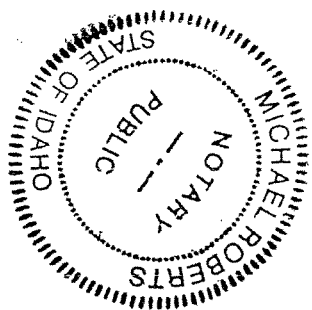
10. Affiant made a statement to the Honorable Court on October, 29, 2007 before the Honorable Judge Jay R. Gaskill. Affiant hereby incorporates said statement by reference, by and through this affidavit, though said statement was not under oath and is not intended to be through this reference.

11. Affiant is hereby notifying this Honorable Court, that if affiant's Defense preparations are not ~~then~~ thoroughly and effectively made by Defense Counsel, this affiant will seek to represent himself.

12. Affiant is Not Guilty.

Further Your Affiant Sayeth Naught.

Dated This 16th Day of October, 2008.



Leotis Brannon Branigh III
Leotis Brannon Branigh III
Defendant

Subscribed and Sworn to before me, a Notary Public of Idaho, this 16th day of October, 2008.

Michael Roberts

Notary Public of Idaho 1210

AFFIDAVIT IN SUPPORT OF MOTION FOR RECONSIDERATION

Residing at: Lewiston, IDAHO

Exhibit "A"

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 36427
)	
vs.	)	AMENDED CLERK'S
	)	CERTIFICATE
)	
LEOTIS B. BRANIGH III,)	
)	
)	
Defendant-Appellant.)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That the following will be submitted as an exhibit to the record:

Letter dated December 31, 2008 from Leotis B. Branigh
III

2. That the Transcript (dated 1/10/08) requested by the State Appellate Public Defender's office in the Objection to

CLERK'S CERTIFICATE

AMENDED CLERK'S CERTIFICATE

1211

the Clerk's Record has already been submitted with the original Clerk's Record as Preliminary Hearing Transcript dated November 28 and 30, 2007

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court this 7 day of December 2009.

PATTY O. WEEKS, Clerk

By


Deputy Clerk

CLERK'S CERTIFICATE

AMENDED CLERK'S CERTIFICATE

1212